SUPREME COURT OF THE UNITED STATES.

No. 207.

SELAH CHAMBERLAIN, APPELLANT,

vs.

NEWCOMBE CLEVELAND.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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District court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the third day) of January, A. D. 1859, present the Honorable Andrew G. Miller, judge of said court, presiding, Major J. Thomas, marshal, John M. Miller, clerk.

Among other the following proceedings were had, to wit:

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, and Selah Chamberlain.

Be it remembered, that heretofore, to wit, on the thirty-first day of October, A. D. 1857, came the said complainant, Newcomb Cleveland, by his solicitor, Mr. Carpenter, and filed his bill of complaint against the said the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, and Selah Chamberlain, as follows:

Bill of complaint.

To the judge of the district court of the United States for the district of Wisconsin, in equity:

Newcomb Cleveland, of the State of Illinois, and a citizen of said State of Illinois, brings this his bill against the La Crosse and Milwaukee Railroad Company, a corporate body created and existing by and under the laws of the State of Wisconsin, and Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, citizens of the State of Wisconsin, and Selah Chamberlain, of the State of Ohio, and a citizen of the State of Ohio, defendants.

And thereupon your orator complains and says, that heretofore, to wit, on the 7th day of October, A. D. 1857, in the district court of
406 the United States for the district of Wisconsin, by the consideration and judgment of said court, your orator recovered against the said La Crosse and Milwaukee Railroad Company the sum of one hundred twelve thousand two hundred and seventy-one dollars and seventy-six cents, for the damages which he had sustained, as well by the breaches of the said company defendant's several covenants to and with your orator, as for the costs and charges of your orator, by him about his suit in that behalf expended, which were adjudged to your orator in and by said court, whereof the said company defendant was convicted on the day and year last aforesaid, as by the record of said judgment

in the office of the clerk of said court (reference being thereto had, and to which for greater certainty your orator prays leave to refer) will more fully and at large appear.

And your orator further shows unto your honor, that said judgment so recovered as aforesaid remaining in full force and unpaid, and the whole amount thereof remaining unpaid and unsatisfied, your orator, on or about the 22d day of October, A. D. 1857, for the purpose of obtaining satisfaction of said judgment sued and prosecuted out of the district court a writ called a writ of fieri facias, directed to the marshal of said district of Wisconsin, by which said writ the said marshal was commanded that of the goods and chattels of the said La Crosse and Milwaukee Railroad Company, defendant, in his district, he should cause to be made the sum aforesaid, recovered as aforesaid by your orator; and that if sufficient goods and chattels could not be found, then to cause the said amount to be made of the lands and tenements of said company defendant, which it had at the time of docketing said judgment, to wit, on the 7th day of October, A. D. 1857, or at any time thereafter, and was afterwards, to wit, on the 22d day of October, A. D. 1857, delivered to the said marshal to be executed in due form of law; and that afterwards, to wit, on or about the 27th day of October, A. D. 1857, the said marshal levied said writ of fieri facias upon the following described property, to wit, at the city of Milwaukee, in said district, that is to say:

The La Crosse and Milwaukee railroad, and all the interest of the La Crosse and Milwaukee Railroad Company therein, with all the franchises, rights, and privileges thereunto belonging and appertaining, including roads, roadways, rights of way, and real estate of every description, road beds, tracks, ties, rails, station-houses and buildings, and ground, sheds and grounds, engine-houses and grounds, shops and grounds, water-house and grounds, cars and appurtenances, locomotive engines and appurtenances, more particularly described as follows, viz: One passenger depot, one storehouse, two freight depots, grain platform and shed, blacksmith shop, three tank-houses, machine shop, stationary engine-house, paint shop, lumber-house, coppersmith shop, iron-house, blacksmith shop, turntable, circular engine-house, car shop, all in the city of Milwaukee; tank-house, on
407 section 12 of said railroad; one ditto, on section 22; passenger and freight depot at Richfield; one turntable and passenger and freight depot at Schleissengerville; engine-house, tank-house, and passenger and freight depot at Hartford; passenger and freight depot at Rubicon; passenger and freight depot and tank-house at Woodland; ditto, at Iron Ridge; turntable, passenger and freight depot, engine-house, and tank-house at Horicon; passenger and freight depot at Junction; ditto, at Rolling Prairie; turntable, engine-house, tank-house, and passenger and freight depot at Beaver Dam; passenger and freight depot and tank-house at Fox Lake; passenger and freight depot at Cambria; passenger and freight depot, turntable, tank-house, and engine-house at Midland; passenger and freight depot, turntable, engine-house, and tank-house at Portage City; together with the grounds upon which such houses and buildings are

situated, and which are appurtenant thereto; 21 locomotive engines, 10 first class passenger cars, 2 second class ditto, 4 baggage cars, 164 house freight cars, 120 platform cars, 30 gravel cars, and 17 hand cars. Also all that portion of the La Crosse and Milwaukee railroad known at the Watertown division of said railroad, and all the interest of the said La Crosse and Milwaukee Railroad Company therein, with all the franchises, rights, and privileges thereunto appertaining, including roads, roadways, rights of way, and real estate of every description, road beds, tracks, ties, rails, station-houses, buildings and grounds, shops and grounds, water-houses and grounds, engine-houses and grounds, cars and appurtenances, locomotives and appurtenances; also about 45,000 bars of railroad iron, more particularly described as follows, viz: one engine-house in the city of Milwaukee; one station-house at the Junction, one ditto and wood-shed at Pewaukie; one station-house, at Hartland; one ditto, at Pine Lake station; one water-house, one wood-shed, and one station-house at Oconomowoc; one station-house, frame shed, machine shop, car shop, blacksmith shop, two water-houses, engine-house, and wood-shed at Watertown; station-house and water-house at Lowell; station-house, engine, and water-house at Columbus; together with the grounds upon which such houses and buildings are situated, or which are appurtenant thereto; 7 locomotive engines, 67 box cars, 35 rack cars, 10 hand cars, 4 passenger cars, and 2 baggage cars, 20 dump cars, about 42,612 bars of railroad iron, lying piled on lots in blocks 40 and 41 in the 2d ward in the city of Milwaukee; also, lots 9, 10, and 11, in block 3, and lots 1, 2, and 3, in block 47, in the 5th ward of the city of Milwaukee; lots 1 and 4, in block 156, lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, in block 155; ½ of block 157, except lot 8, and the bayou adjoining said block; ½ of lots 8, 9, and 10, all of lots 12, 13, and 14, ½ of lots 16 and 17, and E. half of 15, in block 158, in the 4th ward of the city of Milwaukee. All of which said property was then and there, to wit, at the time of said levy, situated in said district of Wisconsin, and was the property, goods, chat-
408 tels, rights, franchises, lands, and property of the said La Crosse Railroad Company, subject to levy of execution, or fieri facias, in manner and form as aforesaid; and all of which said property, the said marshal afterwards, to wit, on the 30th day of October, A. D. 1857, advertised for sale, at public auction, according to law, to satisfy said writ, to wit, on the 15th day of December, A. D. 1857, at the said marshal's office, in the said city of Milwaukee, in said district, at the hour of 10 o'clock a. m. of that day, as the law in that behalf requires, as by the said writ of fieri facias, and the directions and certificate of said marshal thereon indorsed, and now in the hands of the said marshal, will more fully appear, and to which, or a copy thereof, your orator prays leave to refer.

And your orator further shows that the whole of said judgment yet remains unpaid and unsatisfied; and that said judgment remains in full force, unreversed and unannulled, and that no part of the said judgment has been paid to your orator, but that to pay the same, the said defendant company ever has and still does neglect and refuse;

and your orator shows, that there is now equitably and actually due to your orator on said judgment the sum of one hundred and twelve thousand two hundred and seventy-one dollars and seventy-six cents, together with interest on the sum of one hundred eleven thousand seven hundred and twenty-seven dollars and 71 cents thereof, from the day of the rendition of said judgment, as aforesaid, over and above all just claims of the said the La Crosse and Milwaukee Railroad Company, defendant, by way of offset or otherwise; and that this bill is not exhibited by collusion with the said the La Crosse and Milwaukee Railroad Company; nor for the purpose of protecting the property, rights, or effects of said company defendant, nor any part thereof, against the claims of other creditors, but for the sole purpose of obtaining the relief hereinafter prayed.

And your orator further shows that the said La Crosse and Milwaukee Railroad Company, defendant, at Milwaukee, in said district, heretofore, to wit, on the 26th day of September. A. D. 1857, designing and intending to injure. delay, cheat, and defraud the creditors of said company, and to injure, delay, cheat, hinder, and defraud your orator of his just debt and damages against said company, did pretend to make, and in form did make, seal, execute, and deliver to one Selah Chamberlain, (whom your orator prays may be made a defendant to this bill,) a pretended lease, in and by which said lease, dated the day and year last aforesaid, the said La Crosse and Milwaukee railroad pretended to, and did express, that it, said company, did sell and convey to said Selah all its personal property, of every name, kind, and description in the State, district of Wisconsin, except all such personal property as was then used in, and was then appurtenant to, the operation of what is known and called the Watertown division of the La Crosse and Milwaukee railroad, and did pretend to, and in said lease did express that it. said company, did let
409 and lease to said Selah, from and after the 30th day of September, A. D. 1857, for an indefinite term of time, to be determined in the manner thereinafter specified, its, said company's, entire railroad and railroad route, from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its, said company's, rights of way, depot grounds, and all buildings, tenements, and fixtures of whatever kind or description, connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances and franchises connected therewith, or belonging or incident thereto, subject only to such prior or superior lines as might or did exist thereon, and all their existing contracts and agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad; which said pretended lease contained many covenants and agreements between said company and said Selah, intended, as your orator is informed and believes, and therefore says, to make said lease look and seem more specious and circumstantial, and to cover still deeper the fraudulent design of said company in making said lease. And your orator further shows to the court, that after the making and delivery to said Selah of said lease as aforesaid, to wit, on the day and year last aforesaid, the said Selah entered into

possession of all the property, rights, privileges, and franchises described, enumerated, and mentioned in said lease, and ever since has taken and received, and is now taking and receiving all tolls and profits, income and revenue of said company's said railroad and other property described in said lease aforesaid. Your orator is informed and believes, and therefore so says, that said company had no legal right or competent authority to make said lease; that the same was made to delay and defraud your orator, as a creditor of said company, and is directly in fraud of his rights; and constitutes, in connection with said Selah's possession and claim of title thereto under the same, a cloud upon your orator's right to sell said property, on your orator's said writ of fieri facias, and seems to be, and is, an impediment in the way of your orator's said writ; and that said Selah is now in possession of all the said property, rights, franchises, and privileges and claims, and pretends to be the absolute owner of all the said personal property, so expressed in said lease to be sold to him, said Selah. And your orator further shows, that at Milwaukee, in said district, heretofore, to wit, on the 30th day of September, A. D. 1857, the said company defendant, designing and intending to cheat and hinder, delay and defraud your orator, and the creditors of the said company, did pretend to, and in form did make, subscribe, seal, and deliver to one D. C. Freeman, whom your orator prays may be made a defendant to this bill, a lease or instrument in writing, in which said lease, the said company did pretend to and did express that it did then and there and thereby sell and convey to said Freeman all its personal property, of every name, kind, and description, in the State
410 of Wisconsin, used in and appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad; and said company did therein and thereby also pretend and express, that it did thereby lease and let unto said Freeman, from and after the day and year last aforesaid, for the term of one year then next ensuing, its entire railroad and railroad route, from the city of Milwaukee, by the way of Watertown and Columbus, to Mainland in the county of Columbia, and commonly called and known as the Watertown division of the La Crosse and Milwaukee railroad, together with its right of way, depot grounds, and all buildings and tenements, of whatever kind and description, connected therewith, or belonging or incident thereto; which said pretended lease contains many mutual covenants between *between* said company and said Freeman.

Your orator says, that he is informed and believes, and so says, that said company had no legal authority to make said lease, and that the same was made and delivered by said defendant with intent to delay, hinder, and defraud its creditors, as the said Freeman, when he received the same, to wit, on the 30th day of September, A. D. 1857, well knew. Your orator further shows that said Freeman, immediately after the execution and delivery to him of said lease, did take possession of all the property enumerated in said lease, and ever since has and now does claim to and does receive all tolls, revenue, and profits arising from the property in said lease enumerated, which is part of the property levied on by said marshal

under your orator's said writ of fieri facias as hereinbefore stated. And that said lease, which was, on the 2d day of October, A. D. 1857, recorded in the office of the secretary of state of the State of Wisconsin, and the possession and claim of right of said Freeman under said lease are a cloud upon your orator's right to sell said property on the writ of fieri facias issued in his favor as aforesaid, and are an impediment in the way of the execution of said writ. Your orator further shows. that heretofore, to wit, on the 2d day of October, A. D. 1857, (while the trial of the issues joined, in the action in which your orator recovered the said judgment hereinbefore mentioned, was proceeding in said court, and after it had become apparent that your orator would recover a large sum of money in said action,) the said the La Crosse and Milwaukee Railroad Company, defendant, intending and designing to cheat and defraud your orator as a creditor of said company defendant, and to prevent your orator from collecting any judgment he might recover in said action, and to delay, hinder, put off, cheat, and defraud the creditors of said company defendant, did, to wit, at the city of Milwaukee in said district, suffer a judgment to pass against it, said company defendant, by confession, in the said district court of the United States for the said district of Wisconsin, in favor of said Selah Chamberlain, without service of process or suit brought, for the sum of six hundred and twenty-nine thousand andeighty-nine dollars and seventy-two cents
411 damages, and fifteen dollars and fifty cents costs, in all, for the sum of six hundred and twenty-nine thousand one hundred and five dollars and twenty-two cents, which said judgment, fraudulently suffered as aforesaid, was duly and regularly entered and docketed in said court on the day and year last aforesaid, and appears and seems to be a lien and encumbrance upon all real property of the said defendant company within the said district of Wisconsin, including the real property hereinbefore described and levied upon as aforesaid.

Your orator further shows that he is informed and believes, and thereupon he says, that the said company defendant, when it so suffered said judgment to pass by confession in favor of said Chamberlain, as aforesaid, was not indebted to said Chamberlain in the sum described and specified in said confession of judgment; and did not owe nor was indebted to said Chamberlain in a sum exceeding the sum of fifty thousand dollars; and that no consideration or value was ever received by, or at any time accrued to, said company defendant, for said judgment above and beyond the sum of fifty thousand dollars; and that said judgment was, by said company defendant, suffered and permitted to pass and be entered and docketed as aforesaid, with the intent thereby to hinder, delay, defraud, and put off the creditors of said company defendant (and particularly to hinder, delay, and defend your orator) by the pretence that said judgment was a good and valid lien upon all the real property of the said defendant company in said district; and your orator is informed and believes, and therefore says, that the said Chamberlain, when he so received the said lease, and when said judgment was entered up and

docketed in his favor as aforesaid, well knew that said company designed and intended thereby, respectively, to hinder, delay, cheat, and defraud its creditors, (and particularly your orator;) that said Selah intended, when he so received said lease and said confession of judgment, respectively, to thereby respectively injure, defraud, and delay your orator; and that the said Selah has sued out writ of fieri facias on said judgment in his favor, and is now threatening to sell, under the same, the railroad iron levied on by your orator, as aforesaid, of great value, to wit, of the value of four hundred and twenty thousand dollars.

Your orator further shows that on or about the 15th day of June, A. D. 1856, the said company defendant was the sole owner, and seized in fee, of each and every of the said lots of land, city lots in the city of Milwaukee, in said district, hereinbefore particularly described, and on which said marshal has levied your orator's writ of fieri facias, as hereinbefore set forth, and that said lands were then and there of great value, to wit, the value of one hundred thousand dollars and upwards; and that Byron Kilbourn, Moses Kneeland, and James Ludington were three of the directors of said company defendant on the day and year last aforesaid; and that on or about the day and year last aforesaid, while said company
412 defendant was so seized of said land, the said Moses Kneeland and James Ludington were appointed by the board of directors of said company defendant, or by the executive committee of said board (which said board was composed of the said Kilbourn, said Kneeland, said Ludington, and others) a committee to sell and dispose of said lands, worth at that time to the said company (as the said Kilbourn, Kneeland, and said Ludington then well knew) more than one hundred thousand dollars; and your orator is informed and believes, and therefore says, that the said Kneeland and said Ludington, then and there designing and intending to injure and defraud said company and its creditors, and disregarding their duty as directors as aforesaid in the premises, and intending unlawfully and fraudulently to acquire to themselves and the said Kilbourn, by a violation of their duty as directors as aforesaid, the said lands for a grossly inadequate price, did sell and transfer said lands, worth, as they then and there well knew, more than one hundred thousand dollars, to one Charles D. Nash, for the nominal consideration of twenty thousand dollars in bonds or stock of said company defendant; but that said Kilbourn, said Kneeland, and said Ludington, or one of them, furnished the said Nash, directly or indirectly, whatever the said Nash pretended to pay to said company for said lands, and that said sale was made to said Nash with the fraudulent secret arrangement and understanding between said Nash and said Kilbourn, said Kneeland and said Ludington, or one of them, that said Nash should thereafter, when requested by said Kilbourn, Kneeland, or Ludington, convey and transfer said lands to said Kneeland, said Kilbourn, or said Ludington, for the benefit of said Kilbourn, Kneeland, and Ludington for a nominal or no consideration; and that said Nash was wholly disinterested in said pretended sale to him of said

land; and that soon after the conveyance of said lands to said Nash, that the said Nash did, in pursuance of said fraudulent and corrupt arrangement hereinbefore stated, convey and transfer said lands to said Kneeland for no consideration, or a nominal or pretended consideration; that said Kneeland, soon after the conveyance aforesaid to him, conveyed and transferred to said Ludington one-third of said land for no consideration, or for a nominal and pretended considera tion, but really in pursuance of said corrupt agreement; and that said Kneeland now holds a record title to two-thirds of said land for himself and the said Kilbourn; that said Kneeland, said Kilbourn, and said Ludington pretend to hold these lands as aforesaid, which are now worth more than two hundred thousand dollars, in fraud of your orator's rights, as a creditor of said company, and by reason of a violation of their duty as directors as aforesaid, and trustees of this same property, and that the same ought to be applied to the payment of your orator's said judgment. To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and
413 utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters, things, statements, and charges aforesaid, and that, too, as particularly as if the same were here again repeated paragraph by paragraph, and they thereunto particularly interrogated; and that they may also make answer, as aforesaid, to the several interrogatories hereafter set forth and numbered as by the note hereunder written they are, respectively, required to answer, that is to say:

1. Whether your orator did or did not receive a judgment as hereinbefore stated, and for the amount hereinbefore stated; and whether the said proceedings under the said judgment have been taken, respectively, as set forth in said bill?

2. And whether the amount, as hereinbefore stated, is or not now equitably due on said judgment?

3. Whether or not said company defendant did, on the 26th day September, A. D. 1857, make, execute, seal, and deliver to said Chamberlain a pretended lease or other instrument in writing, dated on that day or some other day, by which said company defendant did sell and convey to said Chamberlain all of said company's personal property of every name, kind, and description in the State, district of Wisconsin, except all such personal property as was then used in and was appurtenant to what is known and called the Watertown division of the La Crosse and Milwaukee railroad, and whether or not said company defendant did, in said lease, pretend to and express that it did then and there lease to said Chamberlain, from and after the 30th day of September, A. D. 1857, for an indefinite term and time, to be determined in the manner therein specified, its, said company's, entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with said company's right of way, depot, grounds,

and all buildings, tenements, and fixtures of whatever kind or description connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances, and franchise connected therewith, or belonging or incident thereto, and state definitely all the terms, provisions, and conditions of said lease or instrument in writing, and set forth a copy thereof?

4. Whether or not the said Chamberlain, after the making and delivering to him of the said lease or instrument in writing, entered into possession and enjoyment of all the property, rights, privileges, franchises, enumerated and mentioned in said lease or instrument in writing, and whether said Chamberlain has ever since taken and received, and is now taking and receiving, all tolls, profits, income, and revenue of said company's said railroad and other property described in said lease aforesaid?

5. Whether or not there was any, and, if any, what consideration or advantage paid, accruing, or resulting to said company de-
414 fendant for the making and delivery of said lease or instrument in writing to the said Chamberlain, other than that appearing upon the said lease? If so, what? State fully.

6. Whether or not the said Chamberlain now claims and pretends to be the absolute owner of any, and if any, what portion of the property described and enumerated in said lease or instrument in writing?

7. Whether or not, on the 2d day of October, A. D. 1857, or any other day, the said company defendant did, at Milwaukee in said district, suffer a judgment to pass against it, said company defendant, by confession or otherwise, in the said district court of the United States for the said district of Wisconsin, in favor of said Selah Chamberlain, without service of process or suit brought, or otherwise, for the sum of six hundred and twenty-nine thousand one hundred and five dollars, or any other, or what other sum; and for what cause, upon what claim, contract, debt, right or cause of action, was the said judgment confessed? or if upon and for different claims, contracts, and causes of action, state definitely and fully each, every, and all of said claims, rights, or contracts, and state fully when, where, and for what cause, and upon what consideration, and under what circumstances, each and every right, claim, and contract, for which said judgment was confessed, accrued.

8. Whether or not said company was indebted to the said Chamberlain at the time of suffering said judgment, and if so, upon what contract, express or implied, when, how and where, and upon what consideration entered into? and set forth definitely, fully and certainly, each and every item of indebtedness of said company to said Chamberlain, embraced in said judgment; and set forth fully how, when, where, and for what each and every of said items of indebtedness accrued.

9. Whether or not there was any dealings and transactions between the said Chamberlain and the said company defendant, at the time of suffering the said judgment as aforesaid, or at any previous time, and what was the state, account, and balance of such transac-

tion, of what items did they consist, to what subject-matter did they relate, what claims had the said company against the said Chamberlain for money, bond, mortgage, stock, or other things of value, loaned or paid to, or in any way or manner intrusted with the said Chamberlain by said company defendant; and what claims, or items of account, had the said Chamberlain against the said company, what was the date, amount and nature thereof, when, where, and for what did they accrue, and whether any accounting or settlement was had by and between the said Chamberlain and the said company defendant, at the time of suffering said judgment, or at any previous time; and if any such accounting or settlement was had as aforesaid, in whose presence it was had, by whom was it conducted on the part of said company, when and where was it had, how long time was employed in such settlement, and what were the items and
415 charges thus settled and accounted, on each side, and what was the balance and in whose favor ascertained?

10. Whether or not any other person or persons than the said Chamberlain are, directly or indirectly, interested in said judgment, so suffered as aforesaid, and whether or not, the said Byron Kilbourn, Moses Kneeland, and James Ludington, or either of them, or any other person, and if any other, who, have any interest, directly or indirectly, in said judgment so suffered as aforesaid; and if neither of the persons above named all not directly and in form concerned or interested in said judgment with said Chamberlain, whether there is not a secret understanding and arrangement that they or either of them shall enjoy, and shall in some way and at some time, a part of said judgment, if the same shall be collected?

11. Whether or not said Chamberlain has sued out a writ of fieri facias on the judgment so suffered in his favor, and caused the same to be levied upon, and is threatening and intending to sell, to satisfy said writ, some part of the property hereinbefore described?

12. Whether or not the said company defendant, on or about the fifteenth day of June, A. D. 1856, or at any other time, was the owner, and seized in fee or otherwise, and how otherwise interested in the said several lots of land, or either of them, in the said city of Milwaukee, hereinbefore described in said bill, namely; lots nine, ten, and eleven, block three; and lots one, two, and 3 in block 47, in the 5th ward of the city of Milwaukee; lots 1 and 4 in block 156; lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, in block 155; $\frac{1}{3}$ of block 157, except lot 8, and $\frac{1}{2}$ of the bayou adjoining said lot; $\frac{1}{3}$ of lots 9 and 10; all of lots 12, 13, and 14; $\frac{1}{2}$ of lots 16 and 17, and E. $\frac{1}{3}$ of 15 in block 158, in the 4th ward of the city of Milwaukee, or some part thereof, or some part of some of said lots, and what was the value of said lands respectively; and whether the said Byron Kilbourn, Moses Kneeland, and James Ludington, or either of them, were directors of said company defendant while it was so interested in said lands; and whether on the day and year last aforesaid, or on some other day, while the said company defendant was so seized of, or in some way interested in said land, and while the said Kilbourn, said Kneeland, and said Ludington were directors of said company

defendant, the said Moses Kneeland and James Ludington were appointed by the board of directors of said company defendant, or by the executive committee of said board, a committee to sell and dispose of the said land herein above described, and whether said Kneeland, and said Ludington made a contract of sale, either in writing or by parol, which was subsequently ratified and executed by said company defendant, agreeing to sell the said lands to one Charles D. Nash, and if so, for what sum and consideration were the said lands sold to the said Nash? How did he pay therefor, in money or in bonds, mortgages, stocks, or whatever thing of value?

Where did said Nash obtain what he paid therefor? And was
416 it not directly or indirectly understood at the time of said pretended sale to said Nash, that he, said Nash, should thereafter at some time and upon same terms, and if so, what time and what terms, convey said lands to said Kilbourn, said Kneeland, or said Ludington?

13. Whether the said Nash, after the said conveyance to him, did convey said lands, or any part thereof, to said Moses Kneeland? If so, state when said conveyance was made, what consideration, if any, did the said Kneeland pay to the said Nash; was it paid in money, notes, bonds, mortgages, or other and what other thing of value; and if said Kneeland paid any consideration for such conveyance to him, what did the said Nash do with, and how did he dispose of the same; and did not the same, in some way, or in some form, or under some color or device, return to the said Kneeland, or to some other person for the said Kneeland's benefit.

14. Whether any consideration was paid to the said Nash; and if so, whether it was all paid by the said Kneeland, and whether the said Kilbourn, or the said Ludington, paid any part thereof, or contributed in any manner thereto?

15. Whether the said Kneeland, at any time, and what time, after said conveyance to him, conveyed one-third of, or any interest in, (and if any, what portion and what interest of,) said lands so conveyed to him, to the said James Ludington; and what consideration did the said Ludington pay to said Kneeland therefor; when, where, and in whose presence was it paid; was it paid in money, notes, bonds, mortgages, or other, and what other, thing of value; and what did the said Kneeland do therewith, and how dispose thereof; and did not the same, in some way, or under some cover or device, return to the said Ludington, or to some other person or persons for his benefit?

16. Whether the said Byron Kilbourn, Moses Kneeland, and James Ludington, or either of them, claim to own or to be interested in said lands or any part thereof, and what part or what interest therein does the said Kneeland, the said Kilbourn, and the said Ludington, respectively, claim to have or hold of or in the said lands; and what is the value of the portion thereof or interest therein, held or claimed by the said Kneeland, the said Kibourn, and the said Ludington, respectively, and what is the present aggregate value of said lands?

17. Whether or not the said company defendant did, on the 30th day of September, A. D. 1857, or any other day, make and deliver to said Freeman a lease or instrument in writing as set forth in this bill; and whether the said Freeman paid any consideration to said company for said lease; and if so, what consideration, when, how, and in what manner it was paid, and for what reason, and upon what motive was said leave given to said Freeman?

18. Whether there is any secret agreement, understanding, or arrangement that any other, and what other, person than the
417 said Freeman should be interested in, or in any way shall the profit and avail of said lease to said Freeman?

And that the said pretended lease to the said Chamberlain, may be decreed and declared to be illegal, unauthorized, fraudulent, and void as to your orator, and that the said Chamberlain may be decreed to account for, and pay over to your orator, or to a receiver to be appointed in this cause, to be applied in payment of your orator's said judgment, all the tolls, profits, incomes, and revenue which have or may accrue to the said Chamberlain, from his use and possession under the lease as aforesaid; and that the said Chamberlain may be decreed to surrender all claim, right, title, and property under said lease, and that the said lease may be cancelled; and that the said Chamberlain and all persons claiming by, through, or under him, may be perpetually enjoined from setting up or making any claim under said lease; and that the said judgment in favor of the said Chamberlain may be declared to be fraudulent, and as to your orator wholly void; and that the same may be reversed, annulled, and utterly held at nought; that all proceedings under said judgment may be set aside; that the said Chamberlain, and all persons for him, or claiming by, through, or under him, may be perpetually enjoined from setting up any claim or right under said judgment, and from all measures to collect or enforce the same as against your orator; that the several lots of land hereinbefore particularly described may be decreed and declared subject to the lien of your orator's said judgment; and that your orator's said judgment may be declared to be a lien upon all of said lands, and all real property owned by the said company defendant in the said district of Wisconsin, and described hereinbefore and in said lease; and that your orator may be decreed and declared to be authorized to sell all of said lots of land hereinbefore described, or so much thereof as shall be necessary to satisfy his said judgment, and that the said Kneeland, the said Kilbourn, and the said Ludington, may be decreed to join in the conveyance of the land, or so much thereof as shall be sold, to the purchasers at said sale; and that the said Kilbourn, the said Kneeland, and the said Ludington, and all persons for them, or either of them, or claiming by, through, or under them, or either of them, be perpetually enjoined from making or pretending any right to, or interest, or estate therein; and that said conveyances of said land be declared null and void; and that your orator may have such other and further relief, as the nature of his case may require, and as shall be agreeable to equity and good conscience, and that the said Chamberlain, and the said Kilbourn and

the said Kneeland, and the said Ludington, may each and every of them be strictly enjoined and prohibited from selling, transferring, conveying, leasing, encumbering, or in any way interfering or intermeddling with any of the said property hereinbefore described and held, claimed, enjoyed, or possessed by them respectively, or by any other person or persons for them, or either of them; and that
418 a receiver may be appointed with the usual powers of a receiver, according to the practice of said court; and that said lease to said Freeman may be decreed and declared fraudulent and void, and that the said Freeman, and all persons claiming by, through, and under him, may be enjoined from claiming any right under said pretended lease to him, and that the said lease to him may be cancelled, and he be compelled, and decreed to relinquish all possession of property in the said lease enumerated, and that the said Freeman may be enjoined from leasing, selling, encumbering, mortgaging, disposing of, or intermeddling with said property enumerated in said lease, to him, said Freeman.

May it please your honor to grant unto your orator a writ of injunction issuing out of and under the seal of the said court, directed to the said Byron Kilbourn, D. C. Freeman, Moses Kneeland, James Ludington, and Selah Chamberlain, defendants, their counsellors, attorneys, solicitors, and agents, commanding and strictly enjoining them, in the manner hereinbefore mentioned, under a certain penalty, until the further order of the court.

May it please your honor to grant unto your orator a writ of subpœna, issuing out of and under the seal of said court, to be directed to the said La Crosse and Milwaukee railroad, Byron Kilbourn, D. C. Freeman, Moses Kneeland, James Ludington, and Selah Chamberlain, Charles D. Nash, defendants, commanding them and each of them, by a certain day and under a certain penalty therein to be named and inserted, to be and appear in said court, at the court-house of said court, in the city of Milwaukee, in said district, and then and there to answer the premises; and further, to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, &c.

NEWCOMB CLEVELAND.
MAT. H. CARPENTER,
Solicitor for Complainant.
WM. P. LYNDE, *of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

Newcomb Cleveland being personally before me, and being by me first duly sworn, this thirty-first day of October, A. D. 1857, deposed and swore that he had heard read the foregoing bill of complaint by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters stated to be on the information and belief of said complainant, and as to those matters, he believed it to be true.

JNO. A. SAVAGE, JR.,
U. S. Commissioner, District of Wisconsin.

419 The La Crosse Railroad Company is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 17, 18. Defendant Kilbourn is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18. Defendant Moses Kneeland is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18. Defendant James Ludington is required to answer the interrogatories numbered 1, 2, 7, 8, 9, 10, 12, 13, 14, 15, 16. Defendant D. C. Freeman is required to answer the interrogatories numbered 1, 2, 17, and 18. Defendant Charles Nash is required to answer the interrogatories numbered 1, 2, 12, 13, 15. Defendant Selah Chamberlain is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14.

And same day, October 31, A. D. 1857, came the said complainant, by his solicitor, and entered a rule for an injunction, and for the appointment of the receiver, as follows:

Rule for injunction and receiver.

United States district court, Wisconsin.

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, and Selah Chamberlain.

OCT. 31ST, 1857.

On motion of M. H. Carpenter, solicitor for the complainant, it is ordered that the defendants show cause by Friday, the 13th day of November next, at 10 o'clock in the forenoon, why an injunction should not be issued, and a receiver be appointed, according to the prayer of the bill on file.

M. H. CARPENTER,
Complainant's Solicitor.

Whereupon a subpœna is issued, as follows:

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

The president of the United States of America to the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, and Selah Chamberlain, greeting:

You are hereby commanded that you personally appear before the judge of the district court of the United States of America for
420 the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of December next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by Newcomb Cleveland.

And to do further and receive what our said court shall have considered in that behalf; and this you are not to omit, under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, and Selah Chamberlain, if to be found in this district, and due return thereof make.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this thirty-first day of October, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-second.

[SEAL.] J. M. MILLER, *Clerk.*
M. H. CARPENTER, *Solicitor.*

It is ordered by our said court, that the said the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, and Selah Chamberlain, the defendant aforesaid, do enter their appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise, the bill filed filed may be taken as confessed. And it is further ordered, that they show cause by Friday, the thirteenth day of November next, at ten o'clock in the forenoon, why an injunction should not be issued and a receiver be appointed, according to the prayer of the bill on file.

And afterwards, on or before the return day of said writ, came the said marshal, and returned said writ with his return indorsed thereon, as follows:

Return to subpœna.

Served on the within-named James Ludington and Selah Chamberlain, by delivering each of them personally a copy of this subpœna, this 31st day of October, 1857, and served on the within-named Byron Kilbourn, Moses Kneeland, D. C. Freeman, and C. D. Nash, by leaving a copy of this subpœna at the usual place of abode of each of them, this 31st day of October, 1857, and served on the La
421 Crosse and Milwaukee Railroad Company, by delivering a copy of this subpœna to Jackson Hadley, secretary of said company, in person, this second day of November, 1857.

M. J. THOMAS, *Marshal.*

And afterwards, on the 27th day of November, A. D. 1857, came the said defendant, D. C. Freeman, by his solicitor, Mr. Palmer, and filed his answer, as follows:

Answer of Freeman.

District court of the United States for the district of Wisconsin, in chancery.

The separate answer of De Witt C. Freeman, one of the defendants to the bill of complaint of Newcomb Cleveland, complainant, against this defendant, impleaded with the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, James Ludington, Selah Chamberlain, and Charles D. Nash:

This defendant, now and at all times saving and reserving to himself all benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material or necessary for him to answer unto, he answers and says that he has been informed and believes it to be true, and therefore admits, that the said complainant did recover a judgment against the La Crosse and Milwaukee Railroad Company for the amount, and in manner and form, as in said bill of complaint alleged; but whether the whole or any part thereof is still due and owing to the complainant this defendant has no knowledge or belief, nor has he been informed, save by the complainant's bill of complaint; and this defendant leaves the complainant to the proof thereof, as he shall be advised.

And this defendant, further answering, admits it to be true that the said La Crosse and Milwaukee Railroad Company did, on or about the thirtieth day of September, in the year one thousand eight hundred and fifty-seven, make seal, execute, and deliver to this defendant a certain instrument in writing, and which this defendant believes to be the same which is mentioned and alluded to in the said bill of complaint as a pretended lease, the terms whereof are partially set forth in complainant's bill of complaint; that the said instrument contains articles of agreement between this defendant and the La Crosse and Milwaukee Railroad Company, and was on said day interchangeably executed in duplicate between them, but whether the same is in judgment of law a lease this defendant is unadvised, and he humbly leaves this honorable court to construe and give to said contract *its* legal operation, according to the true intent and meaning
422 the parties thereto. That the said contract was entered into with the sole will and design of vesting in the said defendant the right of possession, enjoyment, and use of all and singular the property, rights, privileges, franchises, and emoluments therein mentioned and expressed as a trustee, and in trust and upon the trusts, terms, and conditions therein expressed, and as a security for the payment, of the indebtedness then due and owing by the said La Crosse and Milwaukee Railroad Company to the several persons, and on the several accounts therein more particularly mentioned and described, a true copy of which said instrument or contract is annexed to the answer of the said La Crosse and Milwaukee Railroad Company herein and marked "Schedule K," but this defendant denies that

the said instrument or contract was entered into with any intention to cheat or hinder, delay or defraud the said complainant or the creditors of the said company.

And this defendant, further answering, says he is advised and he submits and insists to this honorable court that the said La Crosse and Milwaukee Railroad Company had lawful and competent power and authority to make and enter into the said contract and agreement with this defendant and to do all things therein and thereby contemplated, and he denies that the same was or is a fraud of the complainant's rights as a creditor of said company, or that the same is a cloud upon his right to sell upon execution any property of the said railroad company subject thereto. But this defendant submits that, save as to the personalty, the complainant may levy and sell the property and interests of the said railroad company subject to the rights of this defendant, as well and absolutely as though this defendant was not in possession thereof.

And this defendant further says that he is informed and believes and upon such information and belief denies that the said contract was made and delivered by the said defendant the La Crosse and Milwaukee Railroad Company with intent to delay, hinder, or defraud its creditors; and this defendant denies that he knew at the time he received the said contract, to wit, on the said 30th day of September, A. D. 1857, or at any other time, that the said contract was made with intent to delay, hinder, or defraud the creditors of the said La Crosse and Milwaukee Railroad Company. And this defendant expressly denies that the said contract was received by him with the intention of hindering, delaying, or defrauding the creditors of the said railroad company, but on the contrary thereof this defendant states and avers that the said contract was made and delivered by the said railroad company and was accepted by this defendant with the sole and only intention of securing the payment of the debts and liabilities therein mentioned which are due and owing to meritorious creditors of the said company.

This defendant, further answering, says that the consideration, and the only consideration, for the making or upon which the said contract was made are correctly expressed therein; that the same
423 was made to this defendant in trust, as therein expressed, for the benefit of the creditors therein named, and to secure the payment of the several debts therein enumerated, and upon no other consideration whatever, and upon no other motive, and for no other purpose.

This defendant, further answering, says that there is no secret agreement, understanding, or arrangement that any other person than this defendant and the several parties named or provided for in said agreement should be interested in or in any way share the profits or avails of the said contract, and that there is no agreement or understanding whatever, either secret or open, between this defendant and any other person or persons or corporation, in relation to the said contract or the matters or things therein mentioned and referred to, other than the said contract, a copy whereof is annexed

to the answer of the said defendant, the La Crosse and Milwaukee Railroad Company, herein, and marked "Schedule K," and to which this defendant craves leave to refer as a part of this his answer.

And this defendant, having fully answered, prays to be hence dismissed with his costs, in this behalf most wrongfully sustained.

D. C. FREEMAN.
H. L. PALMER,
Solicitor for Defendant.
BUTTLER, BUTTRICK & COTTRILL,
Of Counsel.

DISTRICT OF WISCONSIN, *ss:*

On this 27th day of November, A. D. 1857, before me personally appeared Dewitt C. Freeman, and made oath that he has heard read the foregoing answer by him subscribed, and that he knows the contents thereof, and that the same is true, except as to those matters therein alleged to be upon his information and belief; and as to those matters he believes it to be true.

J. P. C. COTTRILL,
U. S. Commissioner, Wisconsin.

And afterwards, to wit, on the 4th day of December, A. D. 1857, came the defendant, Selah Chamberlain, by his solicitors, Messrs. Emmons & Van Dyke, and filed his answer as follows:

Answer of Chamberlain.

The district court of the United States for the district of Wisconsin, in chancery.

The separate answer of Selah Chamberlain, one of the defendants to the bill of complaint of Newcomb Cleveland, complainant, against this defendant, impleaded with the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Chas. D. Nash, defendants:

424 This defendant, now and at all times saving and reserving unto himself all benefits and manner of exception to the many errors and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says:

That he has been informed, and believes it to be true, and therefore admits, that the complainant did recover a judgment against the La Crosse and Milwaukee Railroad Company for the amount and in manner and form as in the bill of complaint alleged; but whether the whole, or any parts thereof, is still owing and due to the said complainant, this defendant has no knowledge or belief; nor has he been informed, save by the complainant in his bill of complaint, and this defendant leaves the complainant to his proofs in that regard. And this defendant, further answering, says he admits it to be true that

the said La Crosse and Milwaukee Railroad Companies did, on or about the twenty-sixth day of September, in the year 1857, make, seal, execute, and deliver to this defendant a certain instrument in writing, and which this defendant believes to be the same which is mentioned and alluded to in the said bill of complaint as a pretended lease, the terms whereof are partially set forth in the complainant's bill, and wherein the terms and conditions of said instrument are in part truly set forth, and in a great part untruly alleged. That said instrument contains articles of agreement between this defendant and the said railroad company, and was on said day interchangeably executed in duplicate by them; but whether the same *the same* is in judgment of law a lease, this defendant is unadvised, and he humbly leaves this honorable court to construe and give said contract its legal operation and efficacy, according to the true and lawful intent of the parties thereto.

That said contract was entered into with the sole view and design of vesting in this defendant the right of possession, enjoyment, and use of all and singular the property, rights, privileges, franchises, and emoluments therein mentioned and expressed, and upon the terms and conditions therein expressed, as a surety for, to this defendant, and as a means of payment of a large sum of indebtedness then due and owing from said railroad company to this defendant. The particulars whereof are hereinafter set forth and disclosed—a true copy of which said instrument, or contract, is hereunto annexed and marked Schedule A. But this defendant expressly denies that the said instrument, or contract, was executed or entered into with any design or intent to injure, delay, cheat, or defraud the creditors of said railroad company, or that any covenants, agreements, or conditions were incorporated therein to cover any covinous or fraudulent design, or with a view or intent of giving the same any specious or circumstancial character. But on the contrary thereof, he avers that the said instrument was executed, and all the covenants and agreements therein contained were entered into with the single purpose and design of
425 creating for and affording to this defendant a security for just indebtedness as aforesaid, and upon the considerations blended therewith, which are hereinafter more particularly mentioned and disclosed; and he admits that thereunder, and on the first day of October last past, he entered into actual possession of all and *and* singular the property, rights, privileges, and franchises described in or contemplated by the said instrument or contract, and that he has employed and enjoyed the use and revenue thereof. But he nevertheless avers that he had the lawful right so to do, and that he has so done in all respects conformable to the terms and conditions of said contract and articles of agreement. And this defendant, further answering, says he is advised, and he submits to this honorable court, that the said La Crosse and Milwaukee Railroad Company had lawful and competent power and authority to make and enter into the said contract and agreement with this defendant, and to do all things therein and thereby contemplated; and he denies that the same was or is in fraud of the complainant's rights as a creditor of said company, or that the same is a

cloud upon his rights to sell upon execution any property of said railroad company subject thereto. But this defendant submits, that save as to personalty the complainant may levy and sell the property and interests of the said corporation subject to the rights of this defendant, as well and absolutely as though this defendant were not in possession thereof. And this defendant, further answering, says that on the twenty-sixth day of September, and contemporaneously with the said contract or agreement set forth herein as Schedule A, there was entered into between this defendant and the said railroad company another agreement, a copy whereof is hereunto annexed and marked Schedule B. And this defendant, further answering, says it is true, and he therefore admits, that on or about the second day of October, in the year 1857, the said railroad company did suffer judgment to be entered against it in the name and in favor of this defendant, for about the sum of six hundred and twenty-nine thousand one hundred and five dollars; but this defendant denies that said judgment was based on any fictitious consideration, or that the same was created with any intent or design to hinder, delay, or defraud the creditors of said railroad company, or with any fraudulent or illegal motive or purpose whatever. But on the contrary thereof, he avers the truth to be that said judgment was entered upon a promissory note executed by said railroad company to this defendant, with a warrant of attorney accompanying the same for confession of *of* judgment, for actual existing indebtedness from said railroad company to this defendant; and so far from said judgment being in whole or in part without consideration, or having been created upon any merely pretended or fictitious considerations in whole or in part, the said corporation was at the time in fact and still is indebted to this defendant in a much larger sum than is expressed in said judgment. The real
426 and true considerations upon which such indebtedness accrued and was created is hereinafter fully set forth, and is as follows: On or about the twentieth day of November, in the year 1856, this defendant entered into a contract with the said corporation, whereby this defendant was to do and perform certain labor and services for said corporation in the ballasting of its railway track between the city of Beaver Dam and Portage City in Wisconsin, being part of that portion of said railroad known as the "eastern division," upon the terms and at the rates and the prices fixed in said contract, a true copy whereof is hereunto annexed and marked Schedule C.

This defendant performed said contract, and the amount, character, and value of the work done by him thereunder appears by the final estimate of E. W. Woodward, esq., the chief engineer of said railroad company a true copy whereof is hereunto annexed, and marked "Schedule D." In addition thereto, this defendant did and performed in and about such work, extra labor and services, and furnished and provided means and materials therefor, and for which bills or invoices were from time to time rendered by this defendant to said company, the aggregate whereof appears in the account hereinafter referred to, but the items and particulars whereof appear in the papers hereunto annexed, and marked respectively, papers 1, 2, 3, 4, 5.

The aggregate amount accruing to this defendant for work done and performed, and for materials and means furnished in and about the work upon said eastern division, is about the sum of one hundred and twenty-four thousand eight hundred and fifty-six dollars and sixty-four cents; and all the payments made to this defendant thereon appear in his general account, hereinafter more particularly referred to. On or about the twentieth day of January, in the year 1857, this defendant entered into another contract with the said corporation for the construction, by this defendant, of that portion of the railroad of said corporation known as the western division, and extending from Portage City aforesaid to La Crosse, in Wisconsin, the terminus of said road, for the prices, and upon the terms and conditions expressed in said contract, a true copy whereof is hereunto annexed, and marked "Schedule E." This defendant entered upon the work contemplated by said last-mentioned contract in the month of February thereafter, and continued to prosecute the same under and pursuant to said contract, and another contract or agreement supplemental thereto and modifying the original in some particulars, entered into between this defendant and said corporation on or about the thirteenth day of April, in the year in 1857, a true copy of which supplemental contract is hereunto annexed, and marked "Schedule A A," until about the twenty-sixth day of September last past, when said original contract and supplement were still further modified by the contract or agreement hereinbefore referred to, and a copy whereof is annexed as aforesaid, and marked "Schedule B."

And this defendant avers that the value of the work, labor, and
427 services by him performed and rendered, under said construction, contract, and supplement, governed by the rates and prices stipulated for in said contracts, and inclusive of what remains to be done by this defendant to complete the work to New Lisbon, as contemplated in the contract hereinbefore set forth as "Schedule B," amounted to the sum of one million seventy-six thousand four hundred and fifty dollars; and the nature, character, and particulars of such work appear in the final estimate of Mr. Woodward, the said chief engineer, a true copy whereof is hereunto annexed, and marked "Schedule F," and all the payments which have ever at any time been made thereon truly appear in the said general accounts, hereinafter more particularly referred to. The amount of work remaining undone, and necessary to be done to complete said road to New Lisbon as aforesaid, according to said contracts, as modified, was, as appears by the estimate of the chief engineer aforesaid, on the first day of October last past, in value estimated by the rates and prices stipulated for in said contracts, the sum of fifty-six thousand five hundred dollars, which sum was deducted in the settlement and adjustment of accounts between this defendant and said corporation, as hereinafter mentioned. A true copy of the estimate of said engineer of incompleted work aforesaid is hereunto annexed and marked "Schedule I;" and this defendant avers that the sum expressed in the said judgment confessed to him was the amount actually ascertained to be due to him on the said first day of October, from the said railroad company, for

work, labor, and services, and materials furnished under said contracts. And this defendant, further answering, says that said corporation was largely in arrear to him during the months of July, August, and September last past, but the aggregate of which arrearages were not actually ascertained from the fact that no final estimate of the work done by him had been made, and from the circumstances that monthly estimates provided for in said construction contracts were, as is usual in such cases, merely approximate, and always really intended as under estimates. That this defendant was, however, aware that the indebtedness of said corporation to him was large, default having been made in the payment of the monthly estimates, as provided for in said contracts; but this defendant was put off with partial payments, and assurances from the officers and agents of said company of their intention and ability soon to liquidate, or nearly so, the indebtedness to this defendant; he made frequent applications for payment or security, and repeatedly suggested and urged the security which was ultimately given by means of the contract set forth in "Schedule A;" but the officers refused from time to time, on the ground alleged, that it would injure the credit of the corporation; and matters went on thus until about the first day of September last past. The arrearage of said company becoming so large, and constantly increasing, this defendant threatened legal proceedings against said company, and visited Mil-
428 waukee with a view of taking professional advice, and if possible, of securing his claim by levy on the railroad iron, which is mentioned in the bill of complaint.

That this defendant communicated his design to the officers and some of the board of directors of said company, and he again urged upon them to place him in possession of the road as mortgagee or otherwise, that he might receive and apply the income towards his indebtedness, but which was still declined; and they besought this defendant not to resort to such proceeding, as it would ruin the already impaired credit of the corporation. That they then contemplated mortgaging said iron as additional collateral security to certain bonds of the company which were in market, and when done would render reasonably certain the prospect of their negotiating something like a million of the corporation bonds for cash, negotiations for which were then pending and nearly complete, and which would relieve the company from its embarrassments. And the strongest assurances were given to this defendant of the success of such pending arrangements. And he was thereby induced to forego legal proceedings upon the promise that out of the funds thus expected to be realized this defendant should receive the sum of one hundred and fifty thousand dollars, and that provision should be made for the speedy adjustment of the balance due this defendant; and that all notes of said company, and of which he then held a large amount, to apply when paid on his account, should be provided for and paid. And with the further assurance and promise that in any event the said corporation would protect this defendant and secure to him the amount his due. That from the information which this defendant

then received, and from what he has since learned, he has reason to believe that the assurances and promises which he then received were based on a reasonable and just expectation and belief on the part of the officers and directors of the said corporation that they would be able to fulfil them; and defendant is informed and believes that shortly thereafter the said company did execute a mortgage of said railroad iron to secure certain land grant bonds, so denominated, but the terms and conditions of which he is unable to state.

That soon thereafter events happened which caused a shock to the monetary affairs of the country, and which ultimately led to the crisis and distrust which at present prevails therein; owing to which, as defendant was informed by the officers and agents of said company, they were unable to keep their engagements with him; and so believing, this defendant, shortly before the said twenty-sixth day of September last past, again applied to the officers and directors of the said corporation for adjustment and settlement of his accounts, and for security of the sum his due. They then told this defendant of their utter disappointment in all their expected arrangements, and admitted to him that they would be unable to pay him the amount due him at present; and furthermore, that in view of the unsettled
429 state of the business and commerce of the country, they could not reasonably expect, for an indefinite time to come, to fulfil the engagements of said company in said construction contract contained; whereupon negotiations ensued between this defendant and the officers and directors of the said corporation, which led to the agreement that the said construction contract should be indefinitely suspended; and in view of the immense injury to be sustained by this defendant consequent thereupon, his damages were liquidated as expressed in the agreement therefor and hereinbefore set forth as "Schedule B," at the sum of two hundred thousand dollars; and this defendant again most urgently insisted on security, and that as a means thereof he should be let into possession of the entire road, and to receive the earnings to apply on his indebtedness, which was for a time resisted and declined; but finally, after much negotiation, this defendant's demand was acceded to in a modified form: and it was agreed, that in order to secure to this defendant the amount actually due to him from said corporation, he should be put in possession of the said La Crosse and Milwaukee railroad and appurtenances, described and expressed in "Schedule A," and entitled to receive and enjoy its net earnings and revenues for the objects and purposes expressed and contemplated in the contract or agreement, a copy whereof is set forth in "Schedule A" aforesaid. And the said contracts and agreements set forth in "Schedule A and B" aforesaid, were prepared and duly executed and delivered as aforesaid. That this defendant then demanded an immediate adjustment of the accounts between said corporation and this defendant, and which was, during the space of about three days thereafter, accomplished. That the board of directors of said corporation were present at such adjustment and settlement; this defendant and said chief engineer most of the time.

It involved a critical examination of estimates and accounts, as contained on the books of this defendant and those of said corporation; and although this defendant claimed and still insists that a considerable larger amount was his due, the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents was finally agreed upon as the amount due this defendant for completed work under said contracts, and exclusive of said two hundred thousand dollars liquidated damages; and for which sum it was agreed that the promissory note of said corporation should be executed and delivered to this defendant, accompanied with a warrant of attorney for the entry of judgment, which was done accordingly; upon which this defendant caused judgment to be entered in this honorable court, on the law side thereof, as is hereinbefore set forth; and he admits that he caused execution to be issued thereon, and to be levied upon the said railroad iron, and upon that portion of the said La Crosse and Milwaukee railroad, its appurtenances, franchises, and privileges, known as the "Watertown division," and all
430 particularly described, as he believes, in the bill of complaint; and he avers that he had lawful right so to do, and that he was induced thereto in view of the large prior encumbrances upon the property and premises of which he was thus put in possession of, and of the large amounts to be paid out of the earnings and revenues of said railroad, prior to any right of application thereof to the indebtedness of this defendant.

And this defendant further answers and says that he has annexed hereto a general statement of accounts between himself and said corporation, and growing out of the matters and contracts hereinbefore set forth, which shows the amount of the work, labor, and services, and materials by this defendant done and performed, and furnished for and to corporation, under said ballasting and constructing contracts; as also all the payments ever made thereon, and all deductions proper to be made from the amounts therein charged or debited, and the surrender of all notes, bills, or securities, held by this defendant prior to the first day of October aforesaid, and showing the balance due to this defendant on the said first day of October; said account is just and true in every particular, unless some slight errors or omissions have been created or have occurred therein, and if any such have or do occur, they are purely accidental and unintentional; and said account is annexed and marked "Schedule G." And this defendant, further answering, says that other than the considerations and motives hereinbefore narrated and set forth, there was no other consideration or advantage paid, according or resulting to said railroad company, for the making and delivery to this defendant, for the instrument or contract under which he took possession of said road, its premises, property, and franchises as aforesaid, unless it was the consideration by said corporation of the fact that the labor and services of this defendant, and the materials by him furnished, and the large advances by him thereby made, to said corporation, had added value to all encumbrances upon its road and franchises, enhanced its wealth and increased the prospects of its creditors ultimately being

satisfied of their just dues, might have influenced a compliance with this defendant's request for such security.

And this defendant, further answering, says he does not claim or pretend to be the absolute owner of the whole or any part of the property described or enumerated in the contract or agreement in virtue of which he was placed in possession of said road and other property and premises therein described and enumerated, but on the contrary he has ever claimed to hold the same as security for his indebtedness aforesaid, and upon the trusts and for the sole uses and purposes described in said contract or agreement.

And this defendant, further answering, says that neither the said Byron Kilbourn, Moses Kneeland, and James Ludington, or any one of them, are or ever were, directly or indirectly, interested or concerned in the said judgment of this defendant against said corporation, or in the other indebtedness mentioned hereinbefore; but, on the contrary, this defendant is alone and solely the *the* owner
431 thereof and interested therein, with this exception, that one Daniel L. Wells, who is and has been in the employ of this defendant as a partial manager and overseer, in and about the work on said railroad under said contracts, is by contract with this defendant to receive from this defendant, as compensation for the services of said Wells, a certain percentage of the profits on the work done under said contracts, and there is no understanding or agreement expressed or implied, direct or indirect, secret or open, by which the said Kilbourn, Kneeland, and Ludington, or either of them, shall ever have or receive any benefit of said judgment or indebtedness, or any share therein, or in the proceeds thereof when collected or realized at any time or in any manner whatsoever.

And this defendant, further answering, says that as to the matters and things set up in said bill of complaint in regard to the alleged transfer of certain real estate therein mentioned by said corporation to Chas. D. Nash, this defendant is an entire stranger, and he has no knowledge or information in regard thereto other than that contained in the complainant's bill, and he leaves the complainant to his proofs in that regard. And this defendant, further answering, says that at the time he was notified by the officers and directors of said corporation of their inability to provide means for the completion and performance on their part of the conditions of said construction contracts, he had a large force of men and horses employed on said railroad, and a large amount of tools, implements, carts, and wagons; he had employed some twelve hundred men and three hundred horses, and a large majority of them were to become and did become idle; and he has been compelled to make large and ruinous sacrifices in the sale of his horses, and has had left upon his hands a very large amount of property which he must either sacrifice or allow the same to remain entirely unproductive until the work, under said construction contracts, may be resumed; he had also to forego for an indefinite time the profits of his contracts. These facts and considerations, as well as others, important to be taken into view in estimating the damage by him to be sustained, induced this defendant to demand

from said corporation a reasonable compensatory sum therefor, and the sum named in the agreement set forth as "Schedule B" was finally, and after much negotiation and controversy, agreed on as a compromise. This defendant demanded a much larger sum, to which he believed himself entitled, and he still insists it ought to have been awarded to him. That upon the principles which he is informed prevailed upon the trial of the suit of the complainant against the said corporation for an alleged breach of a like contract, though vastly inferior in extent, this defendant verily believes he would have been lawfully and justly entitled to the sum of at least three hundred and fifty thousand dollars; and defendant further says, that at the time said sum was agreed on, it was also verbally agreed
that he should receive, in part payment of such damages, two
432 hundred thousand dollars of the second mortgage bonds of said
corporation, at the rate of fifty cents upon the dollar; and shortly after the first October he did receive said bonds, and there now remains due to him of said sum thus agreed upon for his damages but the sum of one hundred thousand dollars.

And this defendant, further answering as to his dealings with the said railroad company, says, that some time in or about the month of February last, he made application in writing to said corporation, through its board of directors, for one hundred and fifty thousand dollars of the bonds of said corporation, known as the ten millions issue, to be applied as a payment to this defendant on the final settlement of accounts when said railroad should be completed to La Crosse, said bonds to be issued on certain conditions in said application named; a true copy of such application is hereto annexed and marked "Schelule H." That such request or application was acted upon by the board of directors, and bonds were issued to the nominal or par value of one hundred and twenty-nine thousand dollars, and twelve hundred and ninety shares of privilege stock, so called, was issued, as follows: March 19, sixty-five first mortgage land grant bonds at eighty cents, and six hundred and fifty shares of said stock five per cent paid; and April second, sixty-four of like bonds, and six hundred and forty shares of like stock, all of which were received by this defendant at the rate of eighty cents on the dollar for said bonds, making, inclusive of said stock, the sum of one hundred and nine thousand six hundred and fifty dollars to be accounted for by this defendant upon the completion of his said construction contract, and the final settlement of accounts between him and said company.

And this defendant, further answering, says that he holds, nor has he in his possession or under his control, any note, bill, bond, mortgage, or security, or any property, or valuable thing whatsoever belonging to said corporation, or in which it has any interest other that what is hereinafter declared and set forth.

And this defendant, further answering, says that upon the completion by him of said railroad, or the work, labor, and materials to be done and furnished by him as contemplated in the contracts and agreements therefor hereinbefore recited to New Lisbon aforesaid, the said railroad company will be indebted to this defendant, in ad-

dition to the indebtedness hereinbefore stated for the value of that portion of the work remaining undone on the first day of October, as aforesaid, and which was then estimated as aforesaid at the sum of fifty-six thousand five hundred dollars. That all and singular the premises are true; wherefore this defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SELAH CHAMBERLAIN.
EMMONS & VAN DYKE,
Solicitors and of Counsel.

433 DISTRICT OF WISCONSIN, *ss:*

Selah Chamberlain, being duly sworn, says that he has read the foregoing answer by him subscribed, and that he knows the contents thereof; and that the same is true of his own knowledge, except as to the matters and things therein stated to be upon his information and belief, and as to such matters, he has been informed and verily believes it to be true.

SELAH CHAMBERLAIN.

Sworn to before me, Nov. 24, 1857.

J. M. MILLER, *Clerk.*

Schedule A.

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain of Cleveland, Ohio, party of the second part, at the city of Milwaukee and State of Wisconsin, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

The said party of the first part, in consideration of the undertaking and agreements of the said party of the second part, hereinafter contained, hereby sells and conveys to the said party of the second part all its personal property of every *of every* name, kind, and description, in the State of Wisconsin, except all such personal property as is used in and is appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property and inventory and schedule shall be made and attached hereto, so soon as the same can conveniently be done. And the said party of the first part, in consideration of the said undertakings and agreements of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the thirtieth day of September, in the year 1857, for an indefinite term of time to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its rights of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurte-

from said corporation a reasonable compensatory sum therefor, and the sum named in the agreement set forth as "Schedule B" was finally, and after much negotiation and controversy, agreed on as a compromise. This defendant demanded a much larger sum, to which he believed himself entitled, and he still insists it ought to have been awarded to him. That upon the principles which he is informed prevailed upon the trial of the suit of the complainant against the said corporation for an alleged breach of a like contract, though vastly inferior in extent, this defendant verily believes he would have been lawfully and justly entitled to the sum of at least three hundred and fifty thousand dollars; and defendant further says, that at the time said sum was agreed on, it was also verbally agreed
that he should receive, in part payment of such damages, two
432 hundred thousand dollars of the second mortgage bonds of said corporation, at the rate of fifty cents upon the dollar; and shortly after the first October he did receive said bonds, and there now remains due to him of said sum thus agreed upon for his damages but the sum of one hundred thousand dollars.

And this defendant, further answering as to his dealings with the said railroad company, says, that some time in or about the month of February last, he made application in writing to said corporation, through its board of directors, for one hundred and fifty thousand dollars of the bonds of said corporation, known as the ten millions issue, to be applied as a payment to this defendant on the final settlement of accounts when said railroad should be completed to La Crosse, said bonds to be issued on certain conditions in said application named; a true copy of such application is hereto annexed and marked "Schelule H." That such request or application was acted upon by the board of directors, and bonds were issued to the nominal or par value of one hundred and twenty-nine thousand dollars, and twelve hundred and ninety shares of privilege stock, so called, was issued, as follows: March 19, sixty-five first mortgage land grant bonds at eighty cents, and six hundred and fifty shares of said stock five per cent paid; and April second, sixty-four of like bonds, and six hundred and forty shares of like stock, all of which were received by this defendant at the rate of eighty cents on the dollar for said bonds, making, inclusive of said stock, the sum of one hundred and nine thousand six hundred and fifty dollars to be accounted for by this defendant upon the completion of his said construction contract, and the final settlement of accounts between him and said company.

And this defendant, further answering, says that he holds, nor has he in his possession or under his control, any note, bill, bond, mortgage, or security, or any property, or valuable thing whatsoever belonging to said corporation, or in which it has any interest other that what is hereinafter declared and set forth.

And this defendant, further answering, says that upon the completion by him of said railroad, or the work, labor, and materials to be done and furnished by him as contemplated in the contracts and agreements therefor hereinbefore recited to New Lisbon aforesaid, the said railroad company will be indebted to this defendant, in ad-

dition to the indebtedness hereinbefore stated for the value of that portion of the work remaining undone on the first day of October, as aforesaid, and which was then estimated as aforesaid at the sum of fifty-six thousand five hundred dollars. That all and singular the premises are true; wherefore this defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SELAH CHAMBERLAIN.
EMMONS & VAN DYKE,
Solicitors and of Counsel.

433 DISTRICT OF WISCONSIN, *ss:*

Selah Chamberlain, being duly sworn, says that he has read the foregoing answer by him subscribed, and that he knows the contents thereof; and that the same is true of his own knowledge, except as to the matters and things therein stated to be upon his information and belief, and as to such matters, he has been informed and verily believes it to be true.

SELAH CHAMBERLAIN.

Sworn to before me, Nov. 24, 1857.

J. M. MILLER, *Clerk.*

Schedule A.

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain of Cleveland, Ohio, party of the second part, at the city of Milwaukee and State of Wisconsin, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

The said party of the first part, in consideration of the undertaking and agreements of the said party of the second part, hereinafter contained, hereby sells and conveys to the said party of the second part all its personal property of every *of every* name, kind, and description, in the State of Wisconsin, except all such personal property as is used in and is appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property and inventory and schedule shall be made and attached hereto, so soon as the same can conveniently be done. And the said party of the first part, in consideration of the said undertakings and agreements of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the thirtieth day of September, in the year 1857, for an indefinite term of time to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its rights of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurte-

hundred thousand dollars of the second [illegible]
corporation, at the rate of fifty cents upon the [illegible]
shortly after the first October he did receive said bonds, and there now remains due to him of said sum thus agreed upon for his damages but the sum of one hundred thousand dollars.

And this defendant, further answering as to his dealings with the said railroad company, says, that some time in or about the month of February last, he made application in writing to said corporation, through its board of directors, for one hundred and fifty thousand dollars of the bonds of said corporation, known as the ten millions issue, to be applied as a payment to this defendant on the final settlement of accounts when said railroad should be completed to La Crosse, said bonds to be issued on certain conditions in said application named; a true copy of such application is hereto annexed and marked "Schelule H." That such request or application was acted upon by the board of directors, and bonds were issued to the nominal or par value of one hundred and twenty-nine thousand dollars, and twelve hundred and ninety shares of privilege stock, so called, was issued, as follows: March 19, sixty-five first mortgage land grant bonds at eighty cents, and six hundred and fifty shares of said stock five per cent paid; and April second, sixty-four of like bonds, and six hundred and forty shares of like stock, all of which were received by this defendant at the rate of eighty cents on the dollar for said bonds, making, inclusive of said stock, the sum of one hundred and nine thousand six hundred and fifty dollars to be accounted for by this defendant upon the completion of his said construction contract, and the final settlement of accounts between him and said company.

And this defendant, further answering, says that he holds, nor has he in his possession or under his control, any note, bill, bond, mortgage, or security, or any property, or valuable thing whatsoever belonging to said corporation, or in which it has any interest other that what is hereinafter declared and set forth.

And this defendant, further answering, says that upon the completion by him of said railroad, or the work, labor, and materials to be done and furnished by him as contemplated in the contracts and agreements therefor hereinbefore recited to New Lisbon aforesaid, the said railroad company will be indebted to this defendant, in ad-

to the matters and [illegible] the payment of all coupons hereafter to become due and before the [illegible] of dollars of the bonds of the said railroad company, believes it to be [illegible] or deed of trust on the railroad of the said [illegible] to Portage City, and from Watertown to [illegible] day of , A. D. 1857.

[illegible] of said net receipts as aforesaid shall re- [illegible] of the second part in payment of the [illegible] of said coupons and sinking fund, shall be become due to him, by virtue either of a [illegible] between said parties, dated January twentieth, 1857; [illegible] between said parties, dated April 30th, [illegible] between said parties, dated November 20th, [illegible] modifying said contract, entered into between [illegible] previously with this contract, except such as may [illegible] which shall be hereafter done between New [illegible] which is to be paid for from the means of the

[illegible] of the second part further undertakes and [illegible] have received from the net earnings [illegible] by the terms and conditions of the [illegible] of the said railroad, bearing [illegible] 20, 1857, January 20, 1857, April 30, [illegible] simultaneously herewith, he is or [illegible] at any time the said party [illegible] which at such time he [illegible] terms and conditions of [illegible] to the said party of the [illegible] the whole and every [illegible] rights of way, depot [illegible] of whatsoever [illegible] tenant thereto, in [illegible] leges, franchises, [illegible] ng or incidental [illegible] ts, fixtures, and [illegible] other personal

nances and franchises connected therewith, or belonging or incident thereto, subject only to such prior and superior liens as may or do exist thereon, and all existing contracts and agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part
434 shall, from and after the said thirtieth day of September, and until this agreement shall be terminated in the manner herein provided, operate so much of said railroad as is ready for operation, and from time to time such portions of the same as shall be made ready for operation in such manner as will produce the largest amount of net receipts. That the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair, and that the said party of the second part shall receive and appropriate, in the manner hereinafter provided, all the receipts or income to be derived from the operation of said railroad.

It is further mutually agreed that the said party of the second part may, if it shall be found for the interest of said company, buy additional rolling stock, and appropriate the receipts of said railroad to the payment of the same.

The said party of the second part hereby undertakes and agrees that he will defray all the current costs and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the cost and expenses of operating the said railroad, and that he will, by the 15th day of every month, make out and deliver to said party of the first part a correct statement exhibiting the total receipts and incomes of said railroad from all sources during the next preceding month; also the costs and expenses during such month of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and also exhibiting the net receipts from said railroad, after deducting such costs and expenses of rolling stock and repairs, and of operating; and that he will at any time, on demand of said company or its president or secretary, furnish to the person demanding the same a statement in detail of the items of which such statement is composed, and any officer or agent of said company, authorized by said company to do so, shall at any time have the right to examine the accounts of said party of the second part, relating to the repairs of said railroad and rolling stock, and to the operating of said railroad.

And the said party of the second part further undertakes and agrees that the net receipts, after deducting the cost and expenses of repairs and operating as exhibited by the said monthly statements as aforesaid, shall be appropriated by him in the manner following, to wit:

First. To the payment of all coupons hereinafter to become due upon nine hundred and fifty thousand dollars of the bonds of said company, secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage City, bearing date June 13th, A. D. 1854, together with the sinking fund provided for by a supplemental

mortgage or deed of trust, bearing date Feb. 6, 1856, except such of said coupons as are payable November 1st, 1857, and the sinking fund of twelve thousand dollars, payable November 1st, 1857.

Second. To the payment of all coupons hereafter to become
435 due on one hundred and fourteen thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date on the 1st day of September, A. D. 1853.

Third. To the payment of all coupons hereafter to become due on two hundred thousand dollars of the bonds of the city of Milwaukee, issued to the La Crosse and Milwaukee Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date the 30th day of July, A. D. 1854.

Fourth. To the payment of all coupons hereafter to become due on one million of dollars of the bonds of the said railroad company, secured by mortgage or deed of trust on the railroad of the said company from Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of , A. D. 1857.

Fifth. Whatever balance of said net receipts as aforesaid shall remain after the payment of said coupons and sinking fund, shall be applied by the said party of the second part in payment of the amount due or hereafter to become due to him, by virtue either of a certain contract between said parties, dated January twentieth, 1857; a supplemental contract between said parties, dated April 30th, 1857; or a contract between said parties, dated November 20th, 1856; or of a contract modifying said contract, entered into between the parties simultaneously with this contract, except such as may become due for work which shall be hereafter done between New Lisbon and La Crosse, which is to be paid for from the means of the said company other than the said income.

And the said party of the second part further undertakes and agrees, that whenever he shall have received from the net earnings of the said railroad such sum as by the terms and conditions of the aforesaid contracts for the construction of the said railroad, bearing date respectively November 20, 1856, January 20, 1857, April 30, 1857, and the one entered into simultaneously herewith, he is or shall be entitled to receive, or whenever at any time the said party of the first part shall pay to him any balance which at such time he shall be entitled to receive, according to the terms and conditions of the said contracts, that he will surrender up to the said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its rights of way, depot grounds, and all buildings, tenements, and fixtures, of whatsoever kind and description, connected therewith or appurtenant thereto, in good repair, together with all estate, rights, privileges, franchises, and appurtenances connected therewith or belonging or incidental thereto, including all the railroad buildings, tenements, fixtures, and appurtenances constructed, and all rolling stock and other personal

property put upon said road by said party of the second part, by virtue of this contract, and that he will reconvey and deliver
436 to said party of the first part all personal property hereby conveyed, which shall not have been worn out, destroyed, or consumed in the construction or operation of the said railroad, and that he will convey and deliver to said party of the first part all personal property which shall have been acquired for said railroad, in pursuance of this contract, or with the means derived from the receipts from said railroad, and that he will at such time deliver on the line of said railroad, to said party of the first part, fifteen thousand cords of wood; and that whenever the said party of the second part shall have received as aforesaid such sum as he shall be entitled to as aforesaid, or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void.

In witness whereof the said party of the first part hath caused these presents to be signed by its president and secretary, and its corporate seal to be hereto affixed, and the same are signed by the said party of the second part.

La Crosse and Milwaukee Railroad Co.—

(Signed) By BYRON KILBOURN, *President.*
JACKSON HADLEY, *Secretary.*
S. CHAMBERLAIN.

Signed, sealed, and delivered in the presence of—

(Signed) H. L. PALMER.
(Signed) THOMAS W. BEAVER.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Be it remembered, that on this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, before the subscriber, a notary public, residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who being by me sworn, said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common and corporate seal of the said company, and was affixed thereto by their authority; and that he as president, and Jackson Hadley, as secretary, subscribed their names thereto by like authority; and on the same day, before me, personally appeared Selah Chamberlain, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same freely and for the uses and purposes therein mentioned.

(Signed) H. L. PALMER,
Notary Public, Milwaukee County.

437 *Schedule B.*

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and

fifty-seven, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland, and State of Ohio, party of the second part:

Witnesseth, that the said parties have mutually undertaken and agreed, and by these presents do undertake and agree, to and with each other, that the contract heretofore entered into between the said parties, for the construction of the western division of the La Crosse and Milwaukee railroad, from Portage City to La Crosse, excepting the bridge across the Wisconsin river at Kilbourn City, and which contract bears date the 20th day of January, A. D. 1857, and the supplemental contract entered into between the same parties, and bearing date the 30th day of April, A. D. 1857, shall be, and the same are, hereby modified as follows, viz:

The said party of the second part shall proceed to complete the construction of said road as *as* far as the depot at New Lisbon, in the county of Juneau, with reasonable despatch, and by the first day of December next. The time for completing the said railroad from New Lisbon to La Crosse is extended indefinitely, and the said party of the second part shall construct the *the* said railroad, between the two last-named points, as fast as and no faster than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same in cash, on monthly estimates, according to the terms and stipulations of the aforesaid contracts.

The contract entered into by and between said parties on the twentieth day of November, A. D. 1856, for the ballasting that portion of the La Crosse and Milwaukee railroad extending from Beaver Dam to Portage City, is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite for doing said work, but that the motive power and cars so used shall be a part of that specified in a contract between said parties entered into simultaneously with this contract for the leasing of said railroad, and that said party of the second part shall, for all ballasting which he shall do after the 30th day of September, A. D. 1857, specified in said contract, and for all other ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured in the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extension of the time of con-
438 structing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second part will sustain by reason of such extension, and by loss, on teams, materials, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second part is to be paid the amount now due to him, and the amount to become due to him for finishing said road to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due, and in further

consideration of the services, risks, and personal expenses of the said party of the second part in the operation and management of said railroad as hereinafter referred to and more particularly set forth in said contract of lease, the said party of the first part hereby agrees to pay to the said party of the second part the liquidated sum of two hundred thousand dollars, which sum is mutually agreed upon by said parties as an equivalent for the aforesaid considerations.

It is further stipulated and agreed that by or before the 20th day of October, A. D. 1857, a full and correct statement shall be made out of the amount due to the said party of the second part on the 30th day September, 1857, under and by virtue of the said contracts of January 20th, 1857, April 30th, 1857, and November 20th, 1856, which sum, together with the aforesaid sum of two hundred thousand dollars, shall be the balance due to the said party of the second part on the 1st day of October, 1857, and shall be charged by said party of the second part to the said party of the first part; and on the first day of every month thereafter the said party of the second part shall charge the said party of the first part with the amount which shall be due under or by virtue of either of said contracts or of this contract in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part with such sum as the said party of the first part shall be entitled to receive from the net earnings of the said railroad, by virtue of the said contract of lease entered into between said parties simultaneously with these presents.

It is further agreed between the said parties that on the first day of July, 1858, and on the first day of each July and each January thereafter, a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be computed up to the day of making up such accounts, at the rate of twelve per cent. per annum.

It is further mutually agreed between the parties that whatever sums shall hereafter become due to said party of the second part for any work done in the construction of said railroad between New Lisbon and La Crosse, shall be paid to him by said party of the first part from the means of said company derived from other sources than the income of said railroad.

In witness whereof the said party of the first part had caused these presents to be signed by its president and secretary, and the corporate seal of said company to be affixed thereto, and the said
439 party of the second part has affixed his signature and seal the day and year first above written.

La Crosse and Milwaukee Railroad Company—
(Signed) By BYRON KILBOURN, *President.*
[L. S.] JACKSON HADLEY, *Secretary.*
[L. S.] S. CHAMBERLAIN.

Schedule C.

Memorandum of an agreement made and entered into this twentieth day of November, 1856, by and between the La Crosse and Milwaukee Railroad Company of the first part, and Selah Chamberlain of the second part, witnesseth:

That for and in consideration of the stipulations and payments hereinafter mentioned, the said party of the second part hath and doth hereby agree to ballast that portion of the La Crosse and Milwaukee railroad extending from the city of Beaver Dam to the city of Portage, the work to be done in a good and workmanlike manner, for the sum of forty cents per cubic yard, the material to be measured in the bank at the gravel pits; the railroad company furnishing motive power and gravel cars sufficient to do the work to good advantage, (not exceeding one locomotive engine and forty dumper cars, or in their stead twenty-four platform cars, unless a greater number of locomotive engines and dumper or platform cars shall be mutually agreed upon,) free of all cost to the said second party. The track shall be raised at least eighteen inches above sub-grade, and as much more as shall be required, to be completed in all respects under the direction and subject to the approval of the engineer of this company in charge of the work. The said railroad company are to furnish all grounds required for gravel pits, and tracks necessary for the same; the said work to be prosecuted in such a manner as not to hinder or delay the passage of any of the regular trains of the company; but it is agreed and understood that the said railroad company are to keep the track in good running order during the execution of this contract, and pay the actual cost of any detentions that may be caused by the railroad company's trains being behind time; but that no claim shall be made by the party of the second part for detentions unless the company's trains are more than thirty minutes behind time-table time.

It is also agreed that when freight trains are twenty minutes behind time, the gravel train shall be allowed to run out in the same direction as the expected train is running, and dump, always stationing a man with a red flag, at least one-fourth of a mile from the gravel-pit run from, to warn approaching trains. It is also agreed that the party of the second part will, upon request of the superintendent of the road, transport to and dump gravel upon any portion of the line of the same embraced in this contract, when gravel is required to repair portions of said road before the same is ballasted, and that the work herein contracted to be done shall be completed on the thirty-first day of July, A. D. 1857.

It is also agreed that the party of the second part may furnish thirty dumper cars at his own cost and charge, to be used on the work herein contracted to be done, and that the party of the first part will, upon the completion of the said work, purchase the said dumper cars, and pay to the said party of the second part the actual cost and charges incurred in the purchase and transportation of

the said dumper cars, from the point where the same were purchased, to the city of Milwaukee; said payments to be made on the first day of August, 1857.

It is also agreed that for all work done under this contract monthly estimates shall be made by the engineer of the said party of the first part, on the first day of each month, for all work done during the preceding month, and that for all work so done prior to the first day of May, 1857, payment shall be made in the company's notes due and payable in the city of New York six months from the time of the rendering of said estimates, with interest at the rate of seven per cent. per annum, and for all work done under this contract subsequently to the first day of May, 1857, payments shall be made in cash on monthly estimates, to be made as hereinbefore provided.

In testimony whereof the said parties have signed this memorandum in the manner following, to wit, the La Crosse and Milwaukee Railroad Company, by Moses Kneeland, vice president thereof, (the president being absent,) and the party of the second part for himself.

La Crosse & Milwaukee Railroad Company—
(Signed) By MOSES KNEELAND,
Vice President.

(Signed) S. CHAMBERLAIN.

Schedule D.

ENGINEER'S OFFICE, LA CROSSE AND MIL. R. RD.,
MILWAUKEE, *Oct. 1st*, 1857.

Estimate of work done by Selah Chamberlain, contractor on the eastern division of the La Crosse and Milwaukee railroad, under this contract, for ballasting that portion between Beaver Dam and Portage City, from commencement to date:

Ballasting, 192,542 y'ds, at 40c.....	$77,016 80
To this is to be added, for fiilling in the bank at Fox lake.....	20,768 65
	97,785 45

I hereby certify that the above estimate is correct.
E. W. WOODWARD,
Chief Engineer.

441 *Schedule E.*

This agreement, made and entered into this twentieth day of January, 1857, between the La Crosse and Milwaukee Railroad Company, of the first part, and Selah Chamberlain, of Cleveland, Ohio, party of the second part, witnesseth:

That the said party of the second part, for and in consideration of the several covenants, stipulations, and payments on the part of the said party of the first part, hereinafter mentioned and set forth to

be made and performed by the said party of the first part, hereby contracts and agrees to construct for said party of the first part a single track sub-grade railroad, except when ballast can be found on the section known as the "western division" of the La Crosse and Milwaukee railroad, extending from Portage City to La Crosse, (except the bridge at Kilbourn City,) it being supposed to be about one hundred and ten miles of main line—all the side tracks to be paid for in addition to the main line, and at the same price per mile. The work included in this contract is the grading, bridging, culverts, ties, chairs, spike, and laying the track, which shall be laid by centre stakes, and without grades. The work to be done in a substantial and workmanlike manner, for the sum of twelve thousand dollars per mile of main line, and the same sum per mile of side track.

Grading.—The road bed shall be graded fourteen feet wide on embankments at sub-grade, and eighteen feet wide in excavations. The excavations and embankments are to have such slopes as the engineer may direct, but not to exceed one foot and a half horizontal to one foot vertical; and no waste earth shall be deposited within three feet of the top of the slopes of excavations, nor any borrowing ditches be dug within five feet of the base of embankments. The said railroad company are to furnish grounds convenient to waste earth when from excavations, and to borrow earth from for embankments for the road bed.

Masonry.—All abutments for bridges and culverts shall be constructed of timber, unless suitable stone can be obtained within two miles of the point where structures are to be put in. Should stone be found within the above limits, the bridges, abutments, and piers (if any) shall be of rough masonry, with good beds and joints. No backing shall be used of less thickness than four inches, unless required for levelling up. Common lime mortar shall be used in all bridge masonry. Culverts shall be constructed of rough stone and without mortar.

Cross-ties.—The cross-ties are to be hewed or sawed, and to be of red, white, burr, and black oak, cedar, spruce, tamarack, gray or Norway pine, black walnut or ash, and are to be six inches
442 thick, eight feet long, and are to have a bearing surface of not less than seven inches. Ties shall be laid in track two feet and three inches from centre to centre, and twenty-three hundred and forty-four ties shall be laid in each mile of track.

Track-laying.—The track shall be laid in the usual way of laying sub-grade track with a T rail, and common wrought-iron chair, the spike to be five inches long and a half an inch square. The said party of the first part agree to furnish the said party of the second part with locomotive power and a sufficient number of platform or suitable cars for the transportation of iron, chairs, spike, ties, timber, and other materials on said western division required during the execution of this contract, free of all cost and charges to said second party; and the said party of the first part also agrees that the contractors shall be passed free over the road during its construc-

tion, and any of his agents necessary for their business shall be furnished with a pass from the president or superintendent, and laborers, with their families and baggage, once out to the work on passes furnished by the contractors or his agent on any freight or construction train.

Extra work.—It is hereby mutually agreed and stipulated between the parties to this agreement, that all grubbing and clearing, all excavations of rock, quicksand, indurated clay, or cemented gravel, all foundations for masonry, all piling and hauling of excavations or embankments over four hundred feet, shall be considered extra work, and shall be paid for at the following rates, to wit: Grubbing and clearing, three hundred dollars per mile the entire length of main line; loose rock excavations, seventy-five cents per cubic yard; rock excavations in dividing ridge, one dollar and twenty-five cents per cubic yard; quicksand excavations, one dollar per cubic yard; hard-pan, indurated clay, or cemented gravel, seventy-four cents per cubic yard; for all hauling of excavation or embankments over five hundred feet, one cent extra per cubic yard for each one hundred feet: provided, that if the aggregate of earth work shall fall short of the maximum of 20,000 cubic yards per mile, then 25 cts. per yard is to be deducted from the above-mentioned price for rock, hard-pan, indurated clay or gravel.

Subdivisions and limits of quantities.—It is further agreed and understood that the work embraced in this contract is to be divided into three subdivisions of nearly equal distances; and should the quantities of excavation and embankments, or any one or more of the subdivisions, exceed twenty thousand yards per mile, such excess shall be paid for as extra work, at the rate of forty cents per cubic yard; and it is agreed that the quantities shall be as much below the above limits as practicable consistent with a proper regard for the location of the work, and due care shall be taken in the location of the line to produce the most favorable results in this respect.

It is also agreed that all excavations from the cuts shall be haueld into embankments when it can be done within a reasonable
443 haul, and shall be computed as excavation or embankment only; the railroad company agree to furnish the iron rails of the T pattern, notched, ready for laying, and deliver at Portage City a sufficient amount to lay the track to Kilbourn City, and at the latter point the balance sufficient to lay the track to La Crosse, and pile the same in a convenient place to load on to the cars, and keep a full supply always on hand, and forward to same point all chairs and spikes required to be used in laying said iron in track free of charge for transportation, and to furnish motive power and cars to transport to Portage City all ties or material for construction now owned by the party of the second part, and on the line of the eastern division of the road of the party of the first part.

It is also agreed by and between the parties that the said party of the first part agrees to do all engineering, and to have the work ready at all times for said party of the second part, so as not to hinder

or delay the work, and to have the work divided off into sections of one mile each, being each regular surveyed mile on the line.

The said first party also agree to furnish all rights of way, and obtain grounds for wasting materials on front excavations, and borrowing from for embankments, so as not to delay or hinder the progress of the work.

And it is further mutually agreed between the parties to this contract that if, in course of the prosecution of this contract, or after the completion of the work to be done, any matter of difference or disagreement shall at any time arise, either as to the construction of this agreement or as to the manner of doing the work herein contracted to be done, all such matters of difference shall be at once submitted to three disinterested persons to act in the premises; and should the parties not be able to agree on the third person, the two first selected shall select a third. The three so chosen shall hear the parties and decide the matter submitted to them, and the decision of a majority of them shall be final and conclusive, and their decision, as aforesaid, shall be irrevocable.

It is further agreed that any extra work required to be done, for which no price is specified, shall be paid for at a fair price.

The work shall be commenced by the first day of February next, and be completed to Kilbourn City on the first day of October next, and to La Crosse by the thirty-first day of October, eighteen hundred and fifty-eight. The said party of the first part agree that the bridge at Kilbourn City shall be completed and ready for the track by the first day of October next.

Estimates and payments.—Estimates shall be made on the first day of each month by the engineer in charge of said work to the amount of work due and materials furnished by said party of the second part during the preceding month, and of the proportion which such work and materials bear to the whole work and materials embraced in this contract, and also separate estimates of the amount of work done and materials furnished by each sub-contractor; and copies
444 of all such estimates shall be furnished to the said party of the second part, and the said party of the first part covenants and agrees to pay to said party of the second part, on the fifth day of each month, ninety per cent. of the amount of such estimates, so to be made on the first day of each month, such payments shall be ninety per cent. of such proportional sum of the whole amount to be paid under this contract, as such work and materials so estimated bear to the whole work and materials embraced in this contract. All estimates shall be paid by sight drafts payable in New York. The retained percentage shall be paid on the completion of each division of 34 miles.

It is also mutually agreed or understood, by and between the parties hereto, that at any time during the progress of the said work the said party of the first part shall have the right to suspend the performance thereof during such times as they may think expedient, and again require the same to be resumed by the party of the second part without being held liable for damages for any such suspension;

Provided, that at least thirty days' notice shall be given to said party of the second part of any such suspension being required, and that a reasonable extension of time shall be given to the said party of the second part, for the completion of the contract, for any detention caused by such suspension.

In testimony whereof the said company has caused these presents to be signed by their president, and the said party of the second part has hereunto subscribed his hand, the day and year first above written.

La Crosse & Milwaukee Railroad Company—
(Signed) By BYRON KILBOURN, *President.*
(Signed) S. CHAMBERLAIN.

This memorandum of agreement entered into between the La Crosse and Milwaukee Railroad Company, party of the first part, and Selah Chamberlain, party of the second part, witnesseth:

That the party of the first part has agreed, and by these presents does agree, to and with the party of the second part, that in case the party of the second part fails to complete the railroad of the party of the first part, to Kilbourn City, by the first day of October, 1857, to the city of La Crosse by the thirty-first day of October, 1858, as stipulated in an agreement made and entered into this day, that no claim for damage shall be made for the non-performance of that portion of the said contract requiring the completion of the said railroad to the points at their respective dates above named, unless the railroad is not completed to Kilbourn City on the first day of November, 1857, and to the city of La Crosse on the thirty-first day of December, A. D. 1858. And it is further agreed by and between the parties hereto that in case the party of the first part fails to complete to the bridge over the Wisconsin river, at Kilbourn City, by the first day of October next, as stipulated in the agreement hereinbefore mentioned, that no claim for damage shall be made
445 by the party of the second part for the non-performance of that portion of the said contract requiring the completion of the said bridge on the first day of October, unless the said bridge is not completed by the first day of November, 1858.

In witness whereof the said company have caused these presents to be signed by their president, and the said second party has hereunto subscribed his hand this twentieth day of January, A. D. 1857.

The La Crosse & Milwaukee R. R. Co.
(Signed) By BYRON KILBOURN, *President.*
S. CHAMBERLAIN.

Schedule A A.

It is mutually agreed by and between the parties to the within contract, that instead of a thorough cut at the dividing ridge, as stated in said contract, the said parties hereby agree to make a tunnel, and the following shall be the prices for the extra work, viz:

Excavation of approaches	$2 00	per cubic yard.
Do. in tunnel	5 00	" " "
Arching	12 00	" perch.
Haul on stone over two miles	50	" "
Timber used in work per lineal foot	25	" "
Packing	3 00	" "
Sinking shafts	10 00	" cubic yard.

Should there be any work not specified herein and required to be done, it shall be paid for at a fair price. The tunnel shall be 24 feet wide, a sub-grade of road, and 22 feet high under the arch, or of such other dimensions as the engineer of the first party may direct. All hauling to be as per contract.

La Crosse & Milwaukee R. R. Co.—

(Signed) By EDWIN H. GOODRICH,
Vice President.

S. CHAMBERLAIN.

Milwaukee, April 30, 1857.

Schedule F.

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE R. R.,
Milwaukee, Oct. 1, 1857.

Estimate of work done by Selah Chamberlain, contractor on the western division of the La Crosse and Milwaukee railroad, between Portage City and La Crosse, from the commencement to the present date:

446	43 miles of main line completed between Portage City and New Lisbon, $12,000	$516,000 00
	2¼ miles side track, with above, $12,000	27,000 00
	Grading and masonry, equal to 9½ miles	96,000 00
	Extra work on earth hauled over 500 feet	41,400 00
	Grubbing and clearing 80 miles, at $300	24,000 00
	Solid rock excavation, 118,250 yds., at $1	118,250 00
	Loose do. do 2,400 do 75 c	1,800 00
	Roadway and cattle passes	11,700 00
	Excavations of foundations and timber for same	6,500 00
	Bank wall, 3,500 yds., at $3	10,500 00
	Tunnel approach excavation, 64,000 yds., at $2	128,000 00
	Pile bridging	2,500 00
	Tunnel culvert at Kilbourn City	2,300 00
	Ballasting 45¼ miles, at $2,000	90,500 00
		1,076,450 00

I do hereby certify that above estimate is correct.

E. W. WOODWARD.

Schedule I.

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE R. R.,
Milwaukee, October 1, 1857.

Estimate cost of work and materials required to complete the La Crosse and Milwaukee railroad to New Lisbon, (that is, from Portage to New Lisbon,) in manner and form as assumed on estimate made this day of work done by S. Chamberlain on the western division:

To complete grading and bridging	$15,000 00
" furnish cross-ties necessary	5,000 00
" complete track laying	11,000 00
" complete ballasting	25,500 00
	56,500 00

I hereby certify that the above is correct.

E. W. WOODWARD,
Chief Engineer.

Schedule G.

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, DR.

1857.				
April	2.	To invoice rendered		$19,538 35
	4.	To do do		320 32
	6.	To do do		2,178 18
447	June 10.	To do do		3,223 97
	Sept. 11.	To do do		1,810 37
	22.	To uncurrent money returned		2,061 00
Oct.	1.	To note No. 272, returned	$10,000 00	
		Interest	530 55	
				10,530 55
	1.	To note No. 280, returned	1,000 00	
		Interest	35 00	
				1,035 00
	1.	To note No. 282, returned	3,934 40	
		Interest	137 70	
				4,072 10
	1.	To note No. 288, returned	13,707 73	
		Interest	399 81	
				14,107 54
	1.	To note No. 302, returned	12,719 60	
		Interest	423 98	
				13,143 58

1857.				
Oct.	1. To note No. 343, returned ..	$10,000 00		
	Interest.....	250 00		
				$10,250 00
	1. To note No. 344, returned ..	8,228 00		
	Interest.....	205 70		
				8,433 70
	1. To note No. 279, returned.....			9,769 18
	1. To estimate for ballasting, 1,92,542 c. yds., at 40 c.....			77,016 80
	1. To filling in bank, Beaver Dam bond.....			20,768 65
				198,259 29
1857.	Credit.			
April	2. By note No. 278.....	$9,769 17		
	2. By do. 279.....	9,769 18		
	4. By do. 280.....	1,000 00		
	4. By do. 281.....	1,000 00		
	4. By do. 282.....	3,934 00		
	4. By warrant on treasurer....	320 32		
	10. By cash, 215 57, 740 60, 136 11	1,092 28		
May	5. By note No. 288.....	13,707 73		
	5. By cash....	726 57		
	30. By do.....	1,285 06		
June	3. By note No. 302.....	12,719 60		
	3. By draft on Atwood & Co....	1,938 91		
	30. By cash.....	1,571 20		
July	10. By note No. 343	10,000 00		
	10. By do. 344	8,228 00		
	31. By cash, 545 72 and 7 00....	552 72		
448	Aug. 31. By cash.....	795 03		
	Sept. 8. By cash.....	200 00		
	10. By cash.....	13 75		
	24. By warrant on treasurer.....	4,500 00		
	Oct. 1. By balance, Chamberlain and Alden.....	4,768 65		
				87,892 57
				110,366 72

La Crosse and Mliwaukee Railroad Company

To S. Chamberlain, DR.

For constructing 43 miles main line between Portage City and New Lisbon.....	$516,000 00
For constructing 2¼ miles side track.....	27,000 00
For constructing, grading, and masonry for 9½ miles..	96,000 00
For extra on earth hauled over 500 feet.....	41,400 00
For grubbing and clearing 80 miles, 300 00.....	23,000 00
For solid rock excavation, 118,250 yds., 1 00.....	118,250 00
For loose rock excavation, 2,400 yds., 75c.....	1,800 00

For roadway and cattle passes	$11,700 00
For excavations of foundations and timber for same	6,500 00
For bank wall, 3,500 yards, at 3 00	10,500 00
For tunnel approach excavation, 6,400 yards, at 2 00	128,000 00
For pile bridging	2,500 00
For tunnel culvert at Kilbourn city	2,300 00
For ballasting 45¼ miles, at 2,000 00 per mile	90,500 00
	1,076,450 00

1857.		Cr.
Mar. 9.	By draft on Atwood & Co	$18,000 00
9.	do do	19,530 00
19.	do do	15,000 00
19.	do do	5,000 00
April 2.	By currency	6,184 00
4.	By draft on Atwood & Co	25,000 00
4.	do do	18,856 00
4.	do do	10,000 00
May 5.	do do	40,000 00
5.	do do	30,605 00
29.	do do	10,000 00
June 2.	do do	10,000 00
2.	do do	10,000 00
2.	do do	8,000 00
2.	do do	20,000 00
2.	do do	67,470 00
July 7.	By warrant on treasurer	6,000 00
7.	By currency	14,000 00
449 11.	By draft on Atwood & Co	15,000 00
13.	By currency	5,000 00
15.	do	5,000 00
18.	do	6,933 00
24.	By draft on Atwood & Co	5,000 00
24.	By warrant on treasurer	5,000 00
24.	do do	5,000 00
Aug. 1.	By currency	8,000 00
7.	By draft on Attwood & Co	5,000 00
7.	By currency	10,000 00
8.	do	10,000 00
13.	do	15,000 00
22.	By my note given up	10,000 00
22.	By currency	7,500 00
Sept. 3.	By draft on Bank Republic	10,000 00
4.	By draft on Bank Republic, 5,000, 5,000	10,000 00
15.	By draft on Bank Republic	5,000 00
16.	By note $456	149 00
Oct. 1.	By my three notes, $10,000 each, given up	30,000 00

1857.				
Oct. 1.	By amount deducted from estimate as being sum required to complete road to New Lisbon	$56,500 00		
				$557,727 00
				518,723 00

Paper No. 1.

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, DR.

1856.			
Dec. 15.	For my two notes of this date, payable in 3 mos. and 6 mos., $5,500 each, for 20 8-wheel gravel cars, *a* 550		$11,000 00
1857.			
Jan. 8.	For my 3 notes to Wasson & Co. for 10 gravel cars		6,497 40
8.	For interest on $5,500 00 to Aug. 1, 4½ mos		219 38
8.	....do....do....do....1½ mos		74 25
8.	....do....6,497 40....do....2⅔ mos		149 80
8.	For freight on 20 cars from Hudson to Cleveland		46 80
8.	For freight on 20 cars from Cleveland to Toledo		201 60
8.	For freight on 20 cars from Toledo to Chicago		320 00
450 8.	By this amount for oiling do		22 88
8.	By J. A. Taylor for hauling cars, $50 and $30		80 00
8.	By freight from Chicago to Milwaukee		200 00
8.	By Galena and Chicago Union R. R. Co		40 00
8.	By freight 10 cars from Cleveland to Chicago		296 80
8.	By freight 10 cars from Chicago to Milwaukee		100 00
8.	By Galena and Chicago Union R. R. Co		50 00
8.	By paid John Miller for hauling 30 cars		123 00
8.	By E. Garfield, expenses for cars		66 44
8.	By 2....do....20 days' time		50 00
			19,538 35

Paper No. 2.

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, DR.

1856.			
Dec.	To cost of opening gravel pit and grading for side track to same		
	To 2 days R. Merrill, 2 00; 10½ by T. Shields, 9½		$47 81

1856.		
Dec.	To 12 days A. Meheme, 1 00; 11¾ by McMc Carty, 8½	$23 75
	To 9½ days Con. Murphy, 1 00; 3½ by Pat. Griffin, 8½	13 00
	To 2 days M. Grunewal; 5½ by M. Holland, 8	8 50
	To 8 days M. Murphy, 1 00; 8¾ by Jas. Owens, 8½	16 75
	To 10 days J. O. Muley, 1 00; 9¾ by Pat. Sullivan, 8½	19 75
	To 8 days John Moran, 1 00; 2½ Martin Dervine, 8½	10 50
	To 2½ days Morris Griffin, 1 00; 8¾ by Bart Gaughlan, 8½	11 25
	To 5 days Wm. McGill, 1 00; 7 by Pat. Hughes, 1 00	12 00
	To 5¾ days Pat. Corney, 5 by Dennis Rugan	10 75
	To 7 days Fredk. Cartee; 6¾ by Arthur Regan, 1 00	13 75
	To 3½ days Jas. Gordon; 2 by Stephen Caton, 1 00	5 50
	To 4 days Michl. Cennelly; 2 by E. S. Pendergrast	6 00
	To 2 days Michl. Kavanaugh; 1 by Frank Finnelly	3 00
	To 1 day George Barton; 1 by Jerry Maloney	2 00
	To 1 day Danl. Maloney; 1 by Chas. Stearns	2 00
	To 1 day Thos. Kennedy; 1 by Edw. McCarty	2 00
	To 1 day M. Sullivan; 5 by Jacob Straw, 3 00	16 00
	To 5 days Oscar Straw, 2 00; 5 P. Hulbut, 1 50	17 50
	To 4 days A. B. Bently, 1 25; 5 by Anthy. Smith	10 00
	To Dale and team, 1½ days, 3 00	4 50
	To for use of tools	64 06
		320 32

451 *Paper No.* 3.

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, DR.

1857.		
March.	For cost of blocking up track, putting gravel on under same, and other necessary work to put track in running order between Midland and Portage city:	
	For James Ramons and party	$66 10
	For Geo. Farrington and party	245 91
	For Jacob Straw and party	371 86
	For Nichl. Morris and party	108 94
	For Rn. Copeland and party	732 62
	For Wm. G. Rogers and party	652 75
		2,178 18

Paper No. 4, including the eight bills on invoices recapitulated below.

La Crosse and Milwaukee Railroad Company
To S. Chamberlain, DR.

1857.

June 1. For recapitulation, viz:

For No. 1. Putting on chairs, re-spiking track, &c	$207 27
For No. 2. Putting on switch, &c., prairie near Fox Lake	107 00
For No. 3. As above, Whitman island	159 12
For No. 4. As above, between Portage City and Midland	90 00
For No. 5. As above, Portage City	260 87
For No. 6. Ties, chairs, and spikes	2,075 90
For No. 7. Repairing gravel cars, &c	110 81
For No. 8. Putting in switch and track, gravel pit, Portage City	213 00
	3,223 97

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, DR.

1857.

April. For the following labor, &c.: Re-spiking and bringing back into guage, and putting in small chairs and taking out large ditto, between Portage and Pardonville:

452	Aaron Waterman, 10 days; common labor, 28 days	$48 00
May.	Aaron Waterman, 2 days; common labor, 6 days	11 30
	8 kegs spikes, used as above, 800	40 00
	James Way and four men, as above, 30¼ days	40 84
	178 kegs spikes	10 68
	James Way and three men, 1¼ days on canal bridge, to let steamboat through, per order Leathe, engineer	7 00
		165 82
	Add 25 per cent. for tools and superintendence	41 45
		207 27

La Crosse and Milwaukee Railroad Company
To S. Chamberlain, DR.

1857.

April. To expense putting in frog and switch, and side track, Fox Lake, viz:

To Charles Alber, 2 days	$6 00
To Cunningham and Bracey, 4 days each	16 00

1857.

April.	To 24 days common labor	$26 40
20.	To 6 men 1 day, extending do.	7 20
May 15.	To Cunningham and Bracey, $4, and 6 men 1 day, moving frog and switch, $7 20	12 20
15.	To 7½ days, taking up frog and switch, near Beaver Dam	10 00
16.	To Cunningham and Bracey, $4 00; 4 men 1 day taking up track, $4 80 do	8 80
		85 60
	Add 25 per cent. for tools, &c	21 40
		107 00

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

For the following expenses, putting in frog and switch, and side track, on Whitman's island:

1857.

March 11.	For Rogers and 4 men, ½ day	$5 20
30.	For Rogers and 4 men, 1 day	10 40
31.	For Rogers and 4 men, 1 day	10 40
April 4.	For Rogers and 3 men, 1 day	9 30
4.	For Cunningham and Bracey, 3 days each	8 00
4.	For Dodge and 6 men, 3 days each	15 60
453 4.	For Cunningham and Bracey, 4 days in M'ch. (The above for gravel pit, north side of main track.)	16 00
May 1 to 9.	For Cunningham & Bracey and 2 men, 5 days, frog and switch, south sideof main track	32 00
	For Bracey, $6 00, and 4 men, 3 days, extending track, 14 40	20 40
		127 30
	Add 25 per cent. for use tools and superintendence	31 82
		159 12

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

1857.

For expenses putting in frog and switch, between Parduville and Portage City:

April.	For C. Alber, 4 days	$12 00
	For Cunningham & Bracey, 4 days each	16 00
	For common labor, 16 days	17 60

1857.

May	2.	For Cunningham & Bracey, $4, and 4 men, 1 day, $4 80	8 80
May 4 & 5.		For Cunningham & Bracey and 4 men, 2 days	17 60
			72 00
		Add 25 per cent. for tools and superintendence	18 00
			90 00

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

1857.

For the following expenses: Taking up side track at Portage City, gravel pit, and putting in frog and switch, and laying side track south of depot:

May 18–24.		For Cunningham & Bracey, $24, and 18 men, 6 days, $129 60, taking up track and straightening iron	$153 60
454		For Cunningham & Bracey, $20, and 5 men 5 days each, putting in switch and laying side track south of depot (was hindered by trains standing on track)	50 00
May	21.	For 4 men, ½ day, repairing engine-house track, Portage city	2 40
	22.	For 2 men, ½ day, putting in cattle-guards, order of Leathe, engineer	1 20
	23.	For 3 men, ¼ day, repairing engine-house track	90
	28.	For 2 men, ¼ day, repairing turntable	60
			208 70
		Add 25 per cent. on tools and superintendence	52 17
			260 87

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

For the following chairs and spikes and ties in gravel pit, on La Crosse and Milwaukee railroad:

Ties.	Chairs.	Spikes.	
86	22	388	Parduville switch from main track to turntable.
56	20	264	Parduville turntable into engine house.
	6	160	Parduville turntable.
16			Parduville support going off turntable.
33	32	300	Portage City engine house.

Ties.	Chairs.	Spikes.		
32	8	144	Portage City side track off turntable.	
236	73	709	Portage City temporary side track, south depot, Portage City.	
620	170	2,990	Portage City gravel pits.	
580	150	2,910	Gravel pit between Portage City and Midland.	
561	156	2,968	Gravel pit on Whitman's island, north side.	
154	47	729	Gravel pit on Whitman's island, south side.	
140	90	1,100	Fox lake gravel pit in prairie.	
225	138	2,754	Fox lake piling.	
256			Fox lake distributed for side track.	
70	14	300	Canal bridge, near Portage City.	
		300	1 keg taken by Hawley from Beaver Dam station.	
180	74	200	Side track near Beaver Dam.	
		16,116	Spikes, ½ lb. each, 8,058, at 5 c.	$402 90
	1,000		Chairs, at 3½ c. each	375 00
3,245			Ties, at 40 c. each	1,298 00
				2,075 90

455 La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

1857.			
March	11.	For Rogers and four men one-half day putting in side sticks for culvert, Lake Robert	$3 90
	19.	For Rogers and twenty men one-half day work on track, passenger train off track and engine taken to haul train to Fox lake,	12 50
	25.	For two men one-half day getting freight cars on track for Kelley	1 20
	26.	For five men one-half day repairing culvert between Midland and Portage city	3 00
	30.	For one man three days wheeling sand into engine house, Midland	3 00
Febr'y	12.	For this amount paid for mending coupling link	38
	19.	For this amount paid for wood work on cars	1 00
March	11.	For coupling iron on engine repaired	1 00
	21.	For mending hook on engine	50
	26.	For mending draft iron	1 00
May.		For Yale's bill for 1,491 foot lumber, for side boards to cars	26 83
		For Smith and Blair, twelve roller stands for gravel cars 502 lb. at 5 c.	25 10
		For drilling and putting screws in same	8 64
			88 65
		Add 25 per cent	22 16
			110 81

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

1857.

For laying side track, putting on switches, &c., Portage City gravel pit:

April	For John Seymour, 9 days	$3 00	$27 00
	For James Mannehan, 4 days	1 00	4 00
	For Michael Calligan, 4 days	1 00	4 00
	For John Convey, 6 days	1 00	6 00
	For Patrick McCarty, 4 days	1 00	4 00
	For Patrick Sullivan, 2½ days	1 00	2 50
	For Cormick Cummings, 4 days	1 00	4 00
	For Martin Ryan, 3½ days	1 00	3 50
	For Nichol Doyle, 3 days	1 00	3 00
	For Albert Sargent, 2½ days	1 00	2 50
	For Alexander Ogden, 9 days	50	4 50
456	For Daniel Cunningham, 3½ days	2 00	7 00
April	For R. N. Copeland, 1 Sunday		3 00
	For George B. Tripp, 1 Sunday		3 00
	For S. H. Baily, 1 Sunday		3 00
	For James Way, 1 Sunday		2 25
	For common labor, 24 Sundays		26 40
	For Jacob Straw, 3 days		7 50
	For common labor, 18 days		18 00
	For Leyman and Cunningham, 3 days each, and 22 days common labor		34 00
			170 40
			213 00
	Add 25 per cent. use tools and superintendence		42 60

Paper No. 5, includes the eight bills following the recapitulation below.

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

For recapitulation:

April.	For blacksmith account	$10 75
May.	For repairing bridges, &c.	135 25
April & May.	For blacksmith	79 13
June.	For blacksmith	265 44
July.	For blacksmith	279 36
	For labor, &c., canal bridge	107 67
	For labor, Portage prairie	373 69
	For bill detentions	559 08
		1,810 37

La Crosse and Milwaukee Railroad Company

To Selah Chamberlain, Dr.

1857.			
April	30.	For repairing coupling bunter	$3 00
		For repairing coupling links	50
		For repairing shackle bar	1 50
		For 4 bolts for brake, 75 c.; repairing switch, 1 50	2 25
May	18.	For repairing coupling	3 00
			10 75

La Crosse and Milwaukee Railroad Co.

To Selah Chamberlain, Dr.

May	6.	For 17½ days moving switch, Fox lake gravel pit	$21 00
457	May 8.	For Barley and 10 men, 1 day repairing canal bridge	15 00
May	18.	For Barley and 8 men, 1 day repairing Fox river bridge	12 60
	16.	For Rogers and 17 men, ½ day to Fox lake fund	11 70
	20.	For Farrington and 24 men, ¾, getting cars on track when frt. run off track at Fox lake piling	23 85
	22.	For putting in crossing at Chestruts	2 00
	24.	For Rogers and 22 men to Fox lake, after wood, ¾ day	22 05
		Add 25 per cent. for tools, &c	27 05
			135 25

La Crosse and Milwaukee Railroad Co.

To Selah Chamberlain, Dr.

April	20.	For repairing dump car, $3; hook on switch rope, $1 50	$4 50
	28.	For repairing brake, $1; repairing brake on flat car, 75c	1 75
	29.	For repairing bunter strap and colt	75
	29.	For 3 chock blocks, dump car	1 00
	29.	For repairing latch on dump car	75
	30.	For repairing bunter on dump car	1 75
May	1.	For repairing 2 doors on dump car	2 50
	1.	For 4 switch-bolts for stand	1 00
	1.	For mending brake on flat car	50
	2.	For section 15, repairing bar	75
	4.	For repairing bunter bolts and plate on flat car	1 00
	6.	For 1 spring colt on frog	75
	6.	For frog bolts	60

May	6.	For mending guard-rail	50
	7.	For section 15, sharpening chisels	25
	7.	For mending spring-hanger, engine No. 11	1 00
	7.	For 6 mending coupling links	60
	7.	For mending chain, engine No. 11	13
	7.	For hanging door on dump car	50
	11.	For chock-blocks, 75c.; repairing bunter, $1	1 75
	11.	For repairing bur, section 15	75
	12.	For engine No. 11, straightening strap	25
	14.	For straightening and mending bunter	3 00
	14.	For 4 bolts, do., $2 50; mending coupling pin, 50c	3 00
	16.	For mending bunter, $1 25; welding coupling, 25c	1 50
458	18.	For 4 new bolts, and repairing woodwork	3 00
	18.	For 3 new brake-heads on cars and chains	1 00
	18.	For hooks and belt	50
	19.	For sharpening chisels for sec. 15	25
	19.	For repairing bunter irons, $4 75; 1 bolt, and repairing brake, 50c	5 25
	20.	For 1 eye bolt on brake stand	25
	20.	For 19 lbs. coupling link, and mending	2 15
	21.	For 40 lbs. iron on car, strap, and plates	4 80
	21.	For repairing 4 bolts, $1; mending bunter, $1	2 00
	21.	For mending brake, 75c.; 228 bolts, $1	1 75
	22.	For shortening 4 new hooks, and bolts and brake	1 25
	22.	For taking off and bending 4 levers	1 00
	22.	For 4 new nuts, 25c.; 4 new bolts, 50c	75
	23.	For putting on brake, 50c.; welding 3 links, 75c	1 25
	23.	For 2 new pins, $1; 2 straps on stake iron, 75c	1 75
	25.	For 2 bolts in bunter, 50c.; long rod on brake, 50c	1 00
	26.	For mending bunter and 1 pin, 50c.; cutting and mending brake, $1 25	1 75
	27.	For brake s. hook and bolt, 50c.; repairing bunter, $3	3 50
	28.	For 1 bolt in bunter, 20c.; shortening brake, 25c.	45
	28.	For shifting 2 brakes on cars	3 00
	29.	For repairing bunter, $1; repairing hand car, 50c	1 50
	29.	For taking off bunter and repairing 2 bolts	2 00
	29.	For shifting brake	1 00
	29.	For repairing spring hang on engine, No. 11	1 00
	29.	For 26 repairing plate and bolt	2 65
	30.	For shortening brake, new chain and eye	1 50
	30.	For 2 bolts, staple, and plate for bunter	2 00
			79 13

La Crosse and Milwaukee Railroad Co.

To S. Chamberlain, Dr.

1857.			
June	1.	To 1 colt on brake, 20c.; shifting brake on flat, $1 50	$1 70
	1.	To 4 coupling-pins, $1 50; 9 staples, 90c	2 40
	1.	To 1 brake-bar and repairing do., $1; splicing draw-bar, $10	11 00
459 June	1.	To repairing door and 3 catches, $4; putting on roller-stand	6 00
June	1.	To repairing brake, $1; 4 new chock blocks, $2 75	3 75
	1.	To repairing 2 chock blocks on beam, $1 50; repairing bolts and iron, $4	5 50
	1.	To 2 coupling-pins and links, $1 25; 2 rods and 2 bolts, 75c	2 00
	8.	To 4 new log mill, 00; repairing brake rod on flat, 15c	15
	9.	To new storup and bolt, 75c.; new brake with rods, &c., $4	4 75
	9.	To repairing bolts, rocker, and iron work, $2; cross-beam on dump, $2	4 00
	9.	To new centre stay, 50c.; 2 dump blocks, 50c	1 00
	9.	To 2 hasps and staples dump cars, 50c.; repairing brake and stand, $1	1 50
	9.	To 1 bolt on dump car, 20c.; repairing brakes on flat	45
	9.	To repairing bumper, 25c.; brake stand and 2 bolts, $1	1 25
	10.	To coupling piece and chain, 75c.; repairing brake on flat car, 25c	1 00
	10.	To repairing brake, 25c.; repairing keying on wheel, 50c	75
	10.	To 2 new chuch on draw-bearer; 2 do. on centre beam	5 00
	10.	To 2 coupling pins and chains, $1 50; repairing doors and brake stands, $1	2 50
	10.	To hasp and staple for dump, 25c.; straightening draw 16, 50c	75
	12.	To 4 large nuts for engine No. 16, 50c.; repairing bunter, 50c	1 00
	12.	To repairing bunter dump, 50c.; coupling pin and broken stand, 50c	1 00
	13.	To 2 coupling pieces and chains, 75c.; repairing bunter flat, 75c	1 50
	13.	To repairing brake and stand flat car, 50c.; repairing brake, 25c	75
	13.	To bunter on flat car, $2 50; repairing stirup iron bolts, &c., $1 25	3 75

1857.

June	13.	To jacking up car and packing, $2 50; 2 blocks on centre, $1 50	$4 00
	15.	To 2 block draw bar, $1 50; 2 new boxes on boxes, 50c	2 00
	15.	To repairing bolt and nut, 15c.; 3 coupling pins	1 65
460	17.	To repairing 2 bunters on flat car with 9 new bolts and stemp	6 00
	17.	To repairing two brakes on flat, $1; 3 new coupling pins, $1 50	2 50
	17.	To repairing two brakes, jacking up car, and replacing springs on dump	1 00
	17.	To 2 new latches on car door, 75c.; repairing dump door, $2 50	3 25
	19.	To 2 bolts and bunters flat car, $2 50; 3 coupling pins, $1 13	3 63
	19.	To new corner stay for dump, 50c.; latch on dump, 38c	88
	20.	To repairing track frame with new bolts, $3; 2 coupling pins, 75c	3 75
	20.	To 2 dump blocks, $2; 3 coupling pins, $1 12	3 12
	20.	To 2 dump blocks, $2; repairing brake with new, $1 25	3 25
	20.	To repairing bunter on dump car, $2; brake on flat, 50c	2 50
	23.	To repairing bunter on flat car, $1; repairing rod and chain, $1 50	2 50
	23.	To 3 coupling pins, $1 12; 13 link coupling, $1.	2 12
	23.	To 3 new cast-iron caps and putting on	50
	23.	To 4 chock blocks for dump cars, $1; 29, repairing dump block	1 25
	23.	To 6 days by R. A. Brownson, repairing woodwork on cars	12 00
	30.	To repairing tracks and putting under cars, $6; bolts on dumps, 25c	6 25
	30.	To putting on castings, $1; putting on rods, 75c.	1 75
	31.	To repairing door dump car, 75c.; repairing bunter, 50c	1 25
	31.	To repairing bunter, 50c.; bolt on stump, 75c.	1 25
	31.	To sharpening chisels for Robinson Lieman	1 00
	20.	To this amount paid Smith & Blear, for roller-stands, 317 a 5c	15 86
	20.	To this amount paid for 12 half boxes, 22c	1 10
	20.	To this amount paid for drilling and putting set-screws on same	5 76
	20.	To this amount paid for 9 pieces bump iron, $2 73.	13 65
	20.	To this amount paid for 5 roller stands, $1 98; drilling and setting, $3 60	13 50
	20.	To this amount paid for 3 roller stands, $1 59	5 95
	20.	To this amount paid for drilling and setting on same	2 16

1857.

461 Je.	20.	To 4 days wheeling and grading turntable Portage City	$5 00
	20.	To 2 men as above	5 00
25 & 26.		To 16 days' labor grading, &c., depot grounds	20 00
		To 4 men ½ day to Midland for wood	2 59
		To 12 wheelbarrows per order W. Kithridge	36 00
		Add 25 per cent. on labor	8 12
			265 44

La Crosse and Milwaukee Railroad Co.

To Selah Chamberlain, DR.

1857.

July	2.	To 1 new bunter and bolts, 5 00; 4 bolts for stump, 1 00	$6 00
	2.	To 2 dump blocks, 75c.; 3d, repairing plate engine, No: 11, 12c	87
	3.	To repairing bunter flat car, 2 00; repairing 3 brake chains, 75c	2 75
	3.	To 2 dump blocks, 75c.; 4 chock blocks, 2 00	2 75
	3.	To raising bed piece and bolts, 1 50; making key bunter, 10c	1 60
	6.	To 2 dump blocks, and fastening brake, 1 25; mending brake, 60c	1 75
	6.	To repairing draw bar, 1 00; 4 chock blocks, 2 00	3 00
	6.	To gripe on casting for dumper, 75c.; new bench for dumper, 1 00	1 75
	7.	To putting on track dump, 2 00; repairing doors and bolts, 75c	2 75
	7.	To 10 bolts, 3 00; 4 bolts on bunter, 1 00	4 00
	7.	To repairing bunter on flat, 1 00; 1 eye and bolt, 1 00	2 00
	7.	To raising door on dumper, 1 25; 8th, 4 bolts on dumper, 1 50	2 75
	8.	To raising bunter on flat, 2 00; repairing stirrup on flat, 2 00	4 00
	9.	To 2 latches, 1 75; 6 sets for flat car, 2 00	3 75
	9.	To 1 stirrup and bolt for flat, 1 25; 1 new draw bar, 3 00	4 25
	9.	To repairing 3 coupling pins, 75c.; repairing coupling link, 25c	1 00
	9.	To 4 bolts for dump, 1 00; 4 chock blocks, dump, 1 00	2 00
	10.	To 1 door post, and repairing door on dump car	2 50
	10.	To putting on new castings and bolts	1 00
	10.	To repairing brake chain and rod	50
462	10.	To 2 dump blocks, 75c.; 1 chock block for dump, 25c	1 00

1857.

July 10.	To 4 bolts for dump car, 1 00; 11th, repairing bunker dump, 2 20	3 20
11.	To repairing brake on dumper, 2 00; repairing track frame, 50c	2 50
11.	To repairing door on dumper, 75c.; 15th, draw bar engine 3, 50c	1 25
13.	To 1 stirrup for dump car, 1 00; coupling pins, 25c	1 25
13.	To repairing door dump, 50c.; 2 door posts on dump car, 1 50	2 00
13.	To repairing brake on flat, 50c.; repairing brake on dump, 1 00	1 50
14.	To 1 catch dumper, 1 00; 1 doz. for brake, 50c.	1 50
14.	To irons for Portage Prairie switch	2 50
14.	To 3 coupling pins for flat, 2 50; repairing brake chain, 37c	2 87
14.	To 2 bolts for dumper, 50c.; 15, repairing bunter flat, 3 00	3 50
15.	To 1 catch dumper, 25c.; 2 bolts for dumper, 1 00	1 25
16.	To 14 staples for flat, 1 75: 1 catch for dumper, 1 00	2 75
16.	To repairing doors on dump, 1 00; 17th, 1 stirrup for flat, 1 50	2 50
17.	To bolts in dumper for bunter, 50c,; 2 straps for bunter, 1 50	2 00
17.	To 6 bolts for flat, 1 50; repairing draw bar flat, 4 00	5 50
17.	To 4 bolts in bunter dump, 1 50; 20th, draw bar dump, 8 00	9 50
20.	To 4 bolts in bunter dump, 1 50; bunter flat car, 1 50	3 00
21.	To repairing draw bar, 4 00; 2 straps and 6 bolts, 3 00	7 00
21.	To stirrup for flat, 50c.; 22d, 8 bolts for dump car, 2 00	2 50
22.	To 2 plates for draw bar, 75c.; repairing draw bar dump car, 8 00	8 75
22.	To repairing 3 doors, 1 00; 23d, stirrup and bolts and flat, 1 00	2 00
23.	To brake rod, and brake for hand-car section man	75
23.	To 2 straps and 4 bolts on draw bar dumper car,	1 50
23.	To repairing draw bar dump car, 8 00; repairing brake, 25c	8 25
24.	To 2 straps for bunter car, 1 50; 6 bolts for bunter flat, 1 50	3 00
463 27.	To repairing bunter on flat, 4 00; 2 bolts door bumper, 50c	4 50
27.	To repairing door dumper car, 75c.; 4 dead wood flat, 1 25	2 00

1857.

July	27.	To repairing stirrup flat car, 25c.; repairing chain flat, 50c	$75
	27.	To 1 brake strap, $1 25; putting on 3 castings, $1	2 25
	25.	To repairing brake flat, 50c.; 6 bolts for dumper, $1 50	2 00
	25.	To repairing brake, engine No. 11, 50c.; repairing 2 brakes, $3	3 50
	25.	To 4 chock blocks, $1; 10 bolts for do., $2 50	3 50
	25.	To new draw bar, $8; repairing 3 doors dump, $1	9 00
	27.	To brake lever and rod, $2; 2 latches for dumper, $1	3 00
	27.	To 1 catch for dump, 50c.; 4 bolts 75c	1 25
	27.	To repairing 2 track frames, $2 50; repairing 1 do., flat, $1	3 50
	27.	To repairing rocker, 2 dumps, $1; repairing brakes, 4 dumps, $4 50	5 50
	27.	To 2 dump blocks, 75c.; 28th, 3 doors on dump, $1 50	2 25
	28.	To 1 dump, and repairing fastenings, $1; repairing brake on dump, 10c	1 10
	28.	To repairing floor on dump, $1; 11 bolts for dump, $1 50	2 50
	28.	To repairing stirrup on flat, 37c.; 1 door catch dump, 50c	87
	28.	To 1 catch, 50c.; 1 coupling pin, 50c.: 1 long coupling, $1 50; 4 bolts	3 25
	29.	To 1 draw bar for dump, $8; repairing doors, 50c	8 50
	29.	To repairing brake on dumper, 75c.; 2 brake rods, flat, $1	1 75
	29.	To repairing bunter on flats, $1 25; 7 bolts for dump, $1 50	2 75
	29.	To repairing braces on dump, 50c.; 3 bolts for dump, 38c	88
	30.	To repairing 3 coupling pins, $1 50; repairing brake flat	2 00
	30.	To 10 bolts, dump, $1 88; 2 plates, dump, 63c	2 51
	30.	To repairing brake on flat, 50c.; repairing cans to spring, $1 50	2 00
	30.	To repairing 3 doors on flat, $1; 31st, draw bar on head block, $11	12 00
	31.	To putting catch on dumper, 10c.; 2 bolts for dumper, 63c	73
464	31.	To catch for dumper, 50c.; coupling for "Shaughain," $2	2 50
	31.	To brake chain for No. 11, 50c.; 4 bolts for dump, 75c	1 25
	31.	To ironing dump blocks	75

1857.

July 31.	For amount paid J. D. Wheelock, for 1,440 ft. timber	$28 80
31.	For amount paid Smith and Blair, roller stands, 54c	4 87
31.	For amount paid Smith and Blair, 24 roller stands, 283	14 15
31.	For coning and drilling same	9 00
		279 36

La Crosse and Milwaukee Railroad Co.
To Selah Chamberlain, DR.

For labor and materials on canal bridge—

C. L. Stewart, 1½ days, $3	$4 50
R. N. Copeland, 1½ days, $3	4 50
E. N. Beers, 1½ days, $2	3 00
Common labor, 12½ days, 10	15 62
21 ties, at 40c	8 00
24 chairs	9 00
300 spikes	15 00
4 ps. 12 x 12 timber, 64 feet, at 20c	12 80
20 plank, 147 feet, at $18 per M	25 47
Add 25 per cent. on $37 62 for tools, &c	9 40
	107 68

La Crosse and Milwaukee Railroad Co.
To Selah Chamberlain, DR.

For labor and materials on side track, Portage prairie—

S. H. Bailey, 7 days	$21 00
Common labor, 79 days, 10	98 75
350 ties, 40c	140 00
82 chairs, 3	31 50
7 kegs spikes, 10 50 at 5	52 50
Add 25 per cent. on $119 75, for tools and superintendence.	29 94
	373 69

La Crosse and Milwaukee Railroad Co.
To Selah Chamberlain, DR.

For the following detentions to gravel trains and men:

1857.

Mar. 12.	For Rn. Copeland and 11 men, 1½ hours bailing water	$2 00
13.	For Rn. Copeland and 12 men, 2 hours bailing water	2 40

1857.			
Mar.	13.	For Rn. Copeland and 12 men, 1 hour bailing water	$1 20
	14.	For Rn. Copeland and 12 men, 1 hour bailing water	1 20
465	15.	To Rn. Copeland and 12 men 1 hr. bailing water.	1 20
	16.	To Rn. Copeland and 12 men 1 hr. bailing water.	1 20
	19.	To Rn. Copeland and 44 men detained ½ day, engine away to assist passenger train	23 50
	19.	To Farrington and 4 men, 1 hour bailing water,	3 50
	20.	To Copeland and 47 men, detained 1 hour; engine pumping up passenger engine	5 00
	20.	To Farrington and 4 men, detained as above	1 00
	21.	To Copeland and 47 men, detained 1 hour; engine switching Portage City yard	5 00
	21.	To Farrington and 4 men, ditto as above	1 00
	25.	To Rogers and 25 men, detained 4 hours by freight train	9 33
April	1.	To Ranons and 32 men, detained ½ hour by freight train	3 50
	6.	To Ranons and 32 men, detained 1¾ hours by freight train	4 37
	7.	To Ranons and 32 men, detained 2¼ hours by freight train	6 50
	23.	To Rogers and 40 men, detained by freight train from 1.50 p. m. till 5.30 p. m.—2.50	10 75
	23.	To Penrod and 31 men, detained by freight train 1¾ hours, as above	5 25
	25.	To Cadwell & Farrington, with 30 men ¼ day, by engine broken down	9 00
	27.	To Cadwell & Farrington, with 30 men ½ day, as above	18 00
	28.	To Cadwell & Farrington, with 30 men ¼ day, helping passenger	9 00
	27.	To Cadwell & Farrington, with 4 men, bailing water ½ day	2 00
	27.	To Rogers and 40 men, detained by freight 4 hours	10 75
	27.	To Penrod and 33 men, detained by freight 3 hours	9 58
May	1.	To Copeland and 40 men, detained ½ day, engine broke	25 50
	2.	To Copeland and 40 men, detained 1 hour, engine freight off	3 90
	4.	To Copeland and 40 men, detained 1 hour, wood and freight train on track	3 90
	9.	To Copeland and 36 men, idle ¼ day, engine went off	11 42
	18.	To Copeland and 36 men, idle ¼ day, engine went to P. city	11 42
	22.	To Copeland and 36 men, idle ¼ day, engine went to P. city	11 42

1857.

466	May	6. To Caldwel and 24 men, idle ¾ day, engine broken	$23 10
		6. To Farrington and 4 men, idle ¾ day, engine broken	5 10
		12. To Caldwell and 24 men, idle ¾ day, engine broken	23 10
		12. To Farrington and 4 men, idle ¾ day, engine broken	5 10
		13. To Caldwell and 24 men, idle 1 day, engine broken	30 80
		13. To Farrington and 4 men, idle 1 day, engine broken	6 80
		29. To Caldwell and 24 men, idle ¾ day, engine broken	23 10
		29. To Farrington and 4 men, idle ¾ day, engine broken	5 10
		20. To Dodge and 26 men, detained ½ day, engine off,	17 85
		22. To Dodge and 27 men, detained ½ day, engine away for repairs	
		22. To Daniels and 31 men, detained by freight 1¾ hours	18 45
		22. To Tripp and 4 men, detained 1 hour, freight 1½ hours behind	4 25
		30. To Tripp and 4 men, detained 1 hour, freight 1½ hours behind	80
	June	2. To Copeland and 36 men, detained 1½ hours, engine broken	80
		11. To Copeland and 33 men, detained ¾ day, engine broken	5 82
		13. To Copeland and 22 men, detained ¼ day, engine broken	32 81
		8. To Copeland and 36 men, detained 2½ days, by passenger train	7 50
		2. To Stewart and 3 men, 1½ hours, engine broken.	9 15
		11. To Stewart and 3 men, 3¼ days, engine broken.	67
		13. To Stewart and 3 men, ¼ day, engine broken	4 50
		4. To Caldwell and 35 men, detained by freight ¼ day	1 50
		7. To Caldwell and 35 men, detained ½ day, engine broken	11 56
		8. To Caldwell and 34 men, detained ½ day, engine broken	23 12
		4. To Farrington and 4 men, detained ¼ day by freight train	22 50
		7. To Farrington and 4 men, detained ½ day, engine broken	1 87
		8. To Farrington and 4 men, detained ½ day, engine broken	3 75
		6. To Tripp and 4 men, detained 1½ hours by freight.	3 75
		24. To Tripp and 4 men, detained 1¼ hours by freight.	1 00
			1 00

1857.		
June 27.	To Tripp and 4 men, detained $1\frac{25}{60}$ hours by freight	$1 00
29.	To Tripp and 4 men, detained $1\frac{1}{4}$ hours by freight.	1 00
30.	To Tripp and 4 men, detained $1\frac{1}{2}$ hours by freight.	1 00
8.	To Daniels and 27 men, detained $\frac{1}{4}$ day by passenger train	9 06
467 4.	To Bailey and 26 men, detained 2 hours by freight	5 83
11.	To Bailey and 30 men, detained, No. 14 bursting steam pipe	1 00
8.	To Bailey and 24 men, detained by freight train, 1 hour	2 70
		559 08

Schedule H.

To the Executive Committee, La Crosse & Milwaukee R. R. Co.:

GENTLEMEN: I propose to receive on my contract for constructing the western division of your road, one hundred and fifty thousand dollars of the bonds of ten million issue of your company, at 80 per cent. of their par value, to be paid for out of last estimate, on final settlement on same, provided you allow me to subscribe for privileged stock to the same amount as allowed in other cases to purchasers of said bonds. Should you accept this proposition, I shall want the bonds at once.

Respectfully yours,

S. CHAMBERLAIN.

Portage City, February 25, 1857.

And same day, to wit, December 4, 1857, came the said complainant, by his said solicitor, and filed exceptions to the answer of Selah Chamberlain, as follows:

Exceptions to answer of Chamberlain.

District court of the United States for the district of Wisconsin, in chancery.

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, and Selah Chamberlain.

Exceptions taken by the complainant to the separate answer of Selah Chamberlain, one of the defendants to the bill of complaint in this cause:

First exception. For that the said defendant hath not to the best or utmost of his knowledge, remembrance, information, or belief

468 answered or set forth whether or not, on the second day of October, A. D. 1857, or any other day, the said company defendant did, at Milwaukee, in said district, suffer a judgment to pass against it, said company defendant, by confession or otherwise, in the said district court of the United States for the district of Wisconsin, in favor of said Selah Chamberlain, without service of process in suit brought, or otherwise, for the sum of six hundred and twenty-nine thousand one hundred and five dollars, or any other and what other sum; and for what cause, upon what claim, contract, debt, right, or cause of action was the said judgment confessed; or if upon and for different claims, contracts, and causes of action, state definitely and fully each, every, and all of said claims, rights, or contracts; and state fully, where, when, and for what cause, and upon what consideration, and under what circumstances, each and every right, claim, contract, for which said judgment was confessed, accrued, as by interrogatory "7," and the note at the foot of the said bill, he was required to do.

Second exception. For that said defendant hath not in manner aforesaid, answered and set forth whether or not the said company was indebted to the said Chamberlain at the time of suffering said judgment; and if so, upon what contract, expressed or implied, when, how, and where, and upon what consideration entered into and set forth, definitely, fully, and certainly, each and every item of indebtedness of said company to said Chamberlain, embraced in said judgment, and set forth fully, how, when, and for what, each, and every said items of indebtedness accrued; as by interrogatory number 8, and by the note at the foot of the said bill, he was required to do.

Third exception. For that the said defendant hath not in manner aforesaid answered and set forth whether or not there were dealings and transactions between the said Chamberlain and the said company defendant, at the time of suffering said judgment as aforesaid, or at any previous time, and what was the state, account, and balance of such transaction; of what items did they consist, to what subject-matter did they relate; what claims had the said company against the said Chamberlain for money, bond, mortgages, stock, or other thing of value, loan or pay to or in any way or manner, and trusted with the said Chamberlain by said company defendant, and what claims or items of account had the said Chamberlain against the said company; what was the date and amount, and nature thereof; when, where, and for what did they accrue, and whether any accounting or settlement was had by and between the said Chamberlain and the said company defendant, at the time of suffering said judgment, or any previous time; and if any such accounting or settlement was had as aforesaid; in whose presence was it had; by whom was it conducted on the part of said company; when and where was it had; how long time was employed in such settlement, and what were the items and charges thus settled and accounted on each side; and what was the balance, and in whose favor ascertained as by interrogatory number 9, and by the note at the foot of said bill he was required to do.

469 Fourth exception. For that the said defendant hath not in manner aforesaid answered and set forth whether any consideration was paid to the said Nash, and if so, whether it was all paid by the said Kneeland; and whether the said Kilbourn or the said Luddington paid any part thereof or contributed in any manner thereto; as by the interrogatory number 14, and the note at the foot of said bill, he was required to do.

In all which particulars the said answer of the said defendant, Selah Chamberlain, is imperfect, insufficient, and evasive; and the complainant therefore excepts thereto and prays that the said defendant, Selah Chamberlain, may put in a further and better answer to the said bill of complaint.

MAT. H. CARPENTER,
Solicitor for Complainant.

And same day, December 4th, 1857, came the defendants, the La Crosse Railroad Company, Moses Kneeland, and James Ludington, by their solicitor, Mr. Palmer, and filed their answers as follows:

Answer of Kneeland.

The district court of the United States for the district of Wisconsin, in chancery.

The separate answer of Moses Kneeland, one of the defendants to the bill of complaint of Newcomb Cleveland, complainant, against this defendant, impleaded with the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, James Ludington, Selah Chamberlain, Charles D. Nash, and De Witt C. Freeman:

This defendant, now and at all times saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says:

That he has been informed and believes, and therefore admits, that the said complainant recovered a judgment against the La Crosse and Milwaukee Railroad Company, for the amount at the time and in the manner alleged in said bill of complaint, but whether the whole, or any part thereof, is still due and owing to the said complainant, this defendant has no knowledge, and he leaves the complainant to his proofs in that behalf.

And this defendant, further answering, says that he has been informed and believes, and therefore admits, that the said La Crosse and Milwaukee Railroad Company, did, on or about the 26th day of September, A. D. 1857, make, execute, seal, and deliver, to the said Chamberlain, a lease or other instrument in writing, a copy
470 thereof is annexed to the answer of the La Crosse and Milwaukee Railroad Company, filed in this case; but the defendant was not present at the execution thereof, and did not participate in the nego-

tiations preliminary thereto, and he can therefore only say that he verily believes that said instrument was executed in good faith for the purposes, under the circumstances and in the manner stated in the said answer of the La Crosse and Milwaukee Railroad Company, and for the particulars of said instrument he refers to the copy thereof, annexed to the answer of the said La Crosse and Milwaukee Railroad Company, as aforesaid.

And this defendant, further answering, says that he is informed and believes, and therefore admits, that the said Chamberlain did, after the delivery of said instrument to him, enter into the possession and enjoyment of all the property, rights, privileges, and franchises mentioned in said instrument, and has ever since taken and received, and is now taking and receiving, the tolls, income, and profits of said railroad, and other property, according to the true intent and meaning of said instrument.

This defendant further answers and says that he is informed and believes that there was no consideration or advantage paid, or resulting to said company, for the making and delivery of said instrument to the said Chamberlain, other than what appears on the face of said instrument.

And this defendant, further answering, says that he is informed and believes, and therefore admits, that the said La Crosse and Milwaukee Railroad Company did, on or about the second day of October, A. D. 1815, suffer judgment to be entered against it in favor of the said Chamberlain for about the sum of six hundred and twenty-nine thousand one hundred and five dollars; and this defendant is informed and believes that said judgment was entered up upon and for a good and valuable consideration, and that the amount thereof was actually due and owing to the said Chamberlain by the said company on the said second day of October; and this defendant is informed and believes that said judgment was so as aforesaid entered for the legitimate and honest purpose of securing a valid and meritorious debt, and with no intent or design to cheat or defraud the said complainant, or the other creditors of said company; and this defendant is credibly informed and believes that said judgment was entered up upon a promissory note, executed by the said company to the said Chamberlain, accompanied by a warrant of attorney, authorizing judgment to be entered thereon; and that so far from the said judgment having been entered upon some merely pretended or fictitious indebtedness, in whole or in part, the same was confessed for an actual bona fide indebtedness, then due and owing by the said company to the said Chamberlain, and that there was then, as this defendant is informed and believes, the sum for which said judgment was confessed due to the said Chamberlain from the said
471 company, as appears from the books of said company and the estimates of the chief engineer thereof.

And this defendant is informed and verily believes that the real and true consideration upon which the said indebtedness accrued and was created is as follows, that is to say:

On or about the 20th of November, in the year 1856, the said La

Crosse and Milwaukee Railroad Company entered into a contract with the said Chamberlain, whereby the said Chamberlain agreed to do and perform certain labor and services for the said company, in the ballasting of its track between the city of Beaver Dam and the city of Portage City, being the part of the said railroad known as the "eastern division," upon the terms and at the rates and prices fixed in and by said contract; a true copy of which said contract is annexed to the answer of the said company, filed in this case and marked "Schedule B." That the said Chamberlain performed the said contract on his part, and the amount, character, and value of the work done under the same appears by the final estimate of E. W. Woodward, chief engineer of said company, a copy whereof is annexed to the answer of the said company, and marked "Schedule C.;" and that in addition thereto the said Chamberlain did and performed, in and about such work, extra labor and services, and furnished and provided means and materials therefor, and for which bills and invoices were from time to time furnished by him to the said company, the aggregate amount whereof appears in the statement of account annexed to the said answer of the said company, and marked respectively, "1," "2," "3," "4," "5," and "1a," "2a," "3a," "4a," "5a," "6a," "7a," "8a."

That the actual amount accruing to the said Chamberlain for work done and materials furnished in and about the work upon the said "eastern division," is about the sum of one hundred and twenty-four thousand eight hundred and fifty-six dollars aad sixty-four cents; and that all the payments made by the said company to the said Chamberlain thereon, appear in the general account of the said Chamberlain with the said company, which said account is particularly and fully set out in the answer of the company aforesaid.

That on or about the 20th day of January, A. D. 1857, the said Chamberlain entered into another contract with the said company, for the construction by the said Chamberlain of that portion of the said railroad known as the "western division," and extending from Portage City aforesaid to La Crosse in Wisconsin, the western terminus of said road, for the prices and upon the terms and conditions of said contract expressed, a true copy whereof is annexed to the answer of the said company, and marked "Schedule D."

That the said Chamberlain entered upon the work contemplated by said contract last mentioned in the month of February thereafter, and continued to prosecute the same, under said contract and another agreement supplemental thereto, and modifying the said original contract in some particulars, which was entered into between the said Chamberlain and the said company, on or about the 30th day of April, A. D. 1857, a true copy of which, and supplemental contract is annexed to the said answer of the said company, and marked "Schedule E;" until about the 26th day of September last past, when said original and supplemental contract were farther modified, by a contract or agreement in writing, entered into by and between the said Chamberlain and the said company on that day, a true copy whereof is annexed to the said answer of the said company, and marked "Schedule F."

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And this defendant is informed and believes that the value of the work, labor, and service performed by the said Chamberlain, under the said contract, and the said contracts supplemental thereto, and for ballasting on the western division, by the direction of the chief engineer, at the rates and prices stipulated for in said contract, inclusive of what remained to be done by the said Chamberlain to complete the work to New Lisbon, as contemplated by said contract, so as aforesaid marked "Schedule D;" amounted to the sum of one million seventy-six thousand four hundred and fifty dollars; and the nature, character, and particulars of said work appear in the final estimate of the said E. W. Woodward, chief engineer, a true copy whereof is annexed to the said answer of the said company, and marked "Schedule G;" and the payments which have been made thereon truly appear in the general account of the said Chamberlain with the said company, a copy whereof is annexed to the answer aforesaid of the said company, and marked "Schedule H."

That the amount remaining to be done to complete the said railroad to New Lisbon as aforesaid, according to said contracts as modified, was, as appears by the estimate of the said E. W. Woodward, chief engineer as aforesaid, on the first day of October, A. D. 1857, in value estimated by the rates and prices stipulated in said contracts, the sum of fifty-six thousand five hundred dollars, which sum was deducted in the settlement and adjustment of the accounts between the said company and the said Chamberlain, and was not and is not included in the said judgment, so as aforesaid confessed by the said company, in favor of the said Chamberlain; a true copy of the said estimate of E. W. Woodward, chief engineer as aforesaid, of the said incomplete work, is annexed to the said answer of the said company, and marked "Schedule I."

And this defendant is informed and believes, and therefore avers, that the amount of the said judgment so confessed as aforesaid was the amount actually ascertained to be due to the said Chamberlain, on the first day of October, A. D. 1857, from the said company, for work, labor, and services, and materials furnished under said contract, according to the terms, prices, and stipulations therein contained, and for ballasting on the western division, as aforesaid.

And this defendant avers, upon information and belief, that
473 at the time of the entry of said judgment, the said company was actually indebted to the said Chamberlain in the full amount of said judgment, which sum was so as aforesaid ascertained to be due to him for work, labor, and services performed, and materials furnished in and about the construction of the said railroad of the said company; and for the particulars and items of such indebtedness, this defendant prays leave to refer to the schedules hereinbefore named, and ask that the same may be taken to be part of this his answer.

And this defendant, further answering, says that he does not know, and cannot say whether any other person or persons than the said Chamberlain are directly or indirectly interested in said judgment, or whether the said Byron Kilbourn or James Ludington is directly

or indirectly therein, though he verily believes that neither the said Kilbourn or the said Ludington has, or ever had, any interest, direct or indirect, therein; and this defendant expressly says that there is not, nor never was, any secret or other arrangement or understanding on his part, or between himself and any other person or persons, that he should enjoy or share in any way, or any time, any part of said judgment, if the same shall be collected, or in any other event; and he does not believe that there is now or ever was, any such arrangement or understanding, that the said Kilbourn or Ludington should, in any event, enjoy or share that said judgment, or any part thereof.

This defendant, further answering, says that he is informed and believes that the La Crosse and Milwaukee Railroad Company, on the 15th day of June, A. D. 1856, was the owner and seized in fee of lots nine, ten, and eleven, in block three, and lots one, two, and three, in block forty-seven, in the fifth ward of said city of Milwaukee, subject to some outstanding unpaid taxes, and an interest or pretended interest of one James D. Doty therein; that on or about the 8th day of September, A. D. 1855, the said La Crosse and Milwaukee Railroad Company claimed to own and possess lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, in block 155, in the fourth ward of said city of Milwaukee; $\frac{1}{8}$ of block 157, except lot 8, and $\frac{1}{8}$ of the bayou adjoining the same, in said ward; $\frac{1}{3}$ of lots 8, 9, 16, and 17, in block 158, in said ward; lots 10, 12, 14, 13, and the east $\frac{1}{2}$ of 15, in said block 158; and lots 1 and 4 in block 156, in said ward; that such title as said company then had in and to the above described lots and real estate in the fourth ward of said city it acquired from the Milwaukee, Fond du Lac, and Green Bay Railroad Company, under and by virtue of an act to amend an act, entitled "An act to incorporate the La Crosse and Milwaukee Railroad Company," approved April 2, 1852, and a contract entered into by and between the said Milwaukee, Fond du Lac, and Green Bay Railroad Company, and the La Crosse and Milwaukee Railroad Company, under and by virtue of said act, by which the two corporations aforesaid became one consolidated company, under the name of the La Crosse
474 and Milwaukee Railroad Company; that the title of lot 13, in block 158 aforesaid, has entirely failed; and that this defendant is informed and believes that the title to lots 14 and the east half of 15, in block 158, lots 4 and 10, in block 155 aforesaid, have entirely failed, so that the said La Crosse and Milwaukee Railroad Company, as this defendant is informed and believes, never acquired any interest in either of the lots last aforesaid; and this defendant is informed and verily believes that the title to all the other lots aforesaid, in the fourth ward of said city, were and are more or less defective; and this defendant further says, that on the said 8th day of September, A. D. 1855, lot 1, in block 155 aforesaid, was not worth, in his opinion, to exceed the sum of six hundred dollars; that lots 5 and 9, in said block, were not then worth to exceed one thousand dollars; that lots 13 and 14, in said block, were not then worth to exceed eight hundred dollars; that lot 6, in said block, was not then worth more

than three hundred and fifty dollars; that lot 2, in said block, was not then worth to exceed four hundred dollars; that lots 8, 11, and 12, in said block, were not then worth more that one thousand and fifty dollars; that lots 4 and 7, in said block, were not then worth to exceed five hundred dollars; that $\frac{1}{3}$ of block 157, except lot 8, in said block, and $\frac{1}{3}$ of the bayou adjoining the same, were not then worth more than one thousand and fifty dollars; that $\frac{1}{3}$ of lots 8, 9, 16, and 17, in said block 158, were not then worth more than two thousand dollars, that lots 10, 12, 13, 14, and the east half of 15, in said block 158, were not worth to exceed four thousand dollars, subject to the encumbrance thereon, and the defective titles thereto; that lot 4, in said block 156, was not then worth more than three hundred and fifty dollars, and that lot 1, in said block 156, was not then worth more than one hundred and fifty dollars.

This defendant is informed and believes that the property aforesaid, lying in the fourth ward of said city, was purchased in the summer of the year 1853, from different persons, by the Milwaukee, Fond du Lac, and Green Bay Railroad Company, and was paid for principally in the stock of said company; that this defendant, in estimating the value of said property, has stated the value of each and every parcel thereof to be about the sum which was so as aforesaid paid for the same respectively; and in making his said estimate has had in view the state and condition of the title of said property, the tax-titles thereon, and the encumbrances resting against the same; and he verily believes that the valuation which he has placed on said lots and parcels of land is all that the same were on the said eighth day of September, 1855, worth, considering the then condition of the titles and the encumbrances thereon.

This defendant further says, that in his judgment and opinion, the value of said lots 9, 10, and 11, in block 3, and 1, 2, and 3, in block 47, in the fifth ward of said city, on the said fifteenth day of June, A. D. 1856, was respectively as follows, to wit: Of lot 9, four
475 thousand dollars; of lot 10, four thousand dollars; of lot 11, four thousand; and of lots 1, 2, and 3, one thousand dollars each.

The six lots last above named were, as this defendant is informed and believes, purchased in the summer or fall of the year A. D. 1853, by the Milwaukee, Fond du Lac, and Green Bay Railroad Company, from George H. Walker, for the sum of fourteen thousand dollars, in the stock of said company; and the said La Crosse and Milwaukee Railroad Company acquired title thereto at the same time and in the same manner as it acquired title to the aforesaid lots and property in the fourth ward of said city.

The said Byron Kilburn, James Ludington, and this defendant, were directors of said company while it was so interested as aforesaid in said property.

The defendant, further answering, says that said James Ludington and this defendant were not, on the said 15th day of June, or on any other day to the knowledge or belief of this defendant, appointed a committee, either by the board of directors of said company or the executive committee thereof, to sell or dispose of said lands, or any

part thereof; and that this defendant and the said Ludington did not at any time make a contract of sale, either in writing or by parol, which was afterwards ratified and executed by the said company defendant, agreeing to sell the said lands to the said Charles D. Nash; but the fact is, that on or about the 3d day of September, A. D. 1855, the said Charles D. Nash submitted a proposition in writing to the president and directors of said company defendant to buy all of the said property, and offering for the same the sum of twenty-five thousand dollars, ten thousand dollars in the farm mortgage bonds of the company, and fifteen thousand dollars in the full paid stock of the company; that said proposition was considered by the executive committee of the board of directors, at a meeting held at the office of said company, on the 7th day of September, A. D. 1855, at which meeting the following members of said committee were present, to wit, Messrs. Judd, Kilbourn, Kneeland, Goodrich, and Townsend; and upon consideration of said proposition the same was accepted by said committee, by the adoption of a resolution of which the following is a copy, as appears by the record of proceedings of the executive committee aforesaid; "*Resolved*, That the proposition of C. D. Nash, submitted in writing under date of the 3d inst., for the purchase of property, real estate, in the 4th and 5th wards, be accepted." That on the eighth day of September, A. D. 1855, in pursuance of a contract so as aforesaid made between the La Crosse and Milwaukee Railroad Company and the said Nash, the said company executed and delivered to the said Nash a quitclaim deed of all the aforesaid property in the fourth ward of said city of the said city of Milwaukee, and received from the said Nash in payment thereof the sum of ten thousand dollars in the farm mortgage bonds of said company; and
476 on the same day, to wit, the said eighth day of September, the said company entered into a contract in writing with the said Nash for the sale and conveyance of all the said property in the fifth ward of said city, a copy of which is hereunto annexed and marked Schedule A; and on or about the fourteenth day of July, A. D. 1856, the said La Crosse and Milwaukee Railroad Company, in pursuance of said contract, executed and delivered to the said Nash a quitclaim deed for all the property last aforesaid.

This defendant, however, says that prior to the said 14th day of July, to wit, on the 24th day of September, A. D. 1855, this defendant purchased the interest of the said Nash in all said property, and received from him a quitclaim deed of all the property lying in the fourth ward of said city, and an assignment of the contract aforesaid for the conveyance of the property lying in the fifth ward of said city; and on the said 14th day of July, upon the execution and delivery of said deed by said company to the Nash, this defendant paid over and delivered, and caused to be paid over and delivered, as hereinafter stated, to said company, fifteen thousand dollars in its full paid stock, and the said Nash, on the 15th day of July, A. D. 1856, executed and delivered to this defendant a quitclaim deed of the property described in said contract, and lying in the fifth ward of said city of Milwaukee. That at and before the time when the said Nash submitted his propo-

sition to the company as aforesaid, for the purchase of the said real estate, the said company was anxious to dispose of the same, and made efforts to sell the said real estate to different individuals, but without effecting a sale thereof until this defendant and the said Nash arranged and agreed to buy the same on or about the said 3d day of September, A. D. 1855, when it was agreed by and between the said Nash and this defendant that the said Nash should make the proposition aforesaid, and if the same was accepted by the said company, that he and this defendant would take and hold the said real estate jointly, and the said Nash did accordingly propose to buy the said real estate, and did finally buy the same as aforesaid, as hereinbefore stated, for the joint account of himself and this defendant, and this defendant furnished the ten thousand dollars of farm mortgage bonds, which were paid over and delivered by the said Nash to the said company, on the said 8th day of September, A. D. 1855; and this defendant expressly avers that the sale of the said real estate so as aforesaid made to the said Nash was a bona fide transaction, and that the same was purchased by the said Nash for himself and this defendant in good faith, and as this defendant verily believes the consideration paid therefor was all that said property was reasonably worth, and as much if not more than could have been obtained for the same, unless the said company would have agreed to perfect the title thereto, and convey the same by warranty deed, which the said company was unwilling and refused to do.

This defendant further says that the action of the execution
477 committee hereinbefore set forth, had on the 7th day of September, 1855, accepting the proposition of said Nash to purchase said property, was approved by the board of directors of said company, at a quarterly meeting, held on the seventeenth day of October, A. D. 1855, and at the said quitclaim deed executed by the said Nash on or about the 14th July, 1856, was executed and delivered by order of the executive committee, pursuant to a resolution of said committee, adopted on the 11th day of July, A. D. 1856, and that such action of the executive committee was approved by the board of directors of said company at a quarterly meeting thereof, held on the seventh day of July, 1856.

This defendant avers that the said company had no use for said real estate; that it was not required for depot grounds or for the other purposes of said company, and that the interests of the said company required that the same should be disposed of, and the liabilities of the company thereby dismissed; and this defendant believes that the interests of the said company were in fact subserved by the disposition so as aforesaid made of the said property, and that no fraud or wrong was intended, and none was in fact done by such sale. That the said real estate was then encumbered to the amount of about nine thousand dollars, and the same was conveyed by quitclaim deed, subject to such encumbrances, and subject also to such tax-titles and other claims or liens as might be outstanding against the same.

This defendant denies that there was any arrangement or agree-

ment, secret, open, or otherwise, by which the said Kilbourn and Ludington, or either of them, was to have or take any interest whatever in the lands so as aforesaid purchased; and he expressly avers that said proposition was made, and the said property purchased, for the joint benefit of this defendant and the said Nash, and for no other person or persons, except that at the time the said Nash made his proposition for the purchase of said property, it was understood between him and this defendant that one Carlisle D. Cook, who was then absent from the city, might have the privilege of meeting with this defendant and said Nash, and take a one-third interest therein if he should choose to do so, but on his return the said Cook declined to become interested with them in said purchase, and did not become interested therein; and soon after the said purchase, the said Nash, on advising with his friends and examining more carefully the title of said property, was desirous that this defendant should take the entire property, and this defendant did accordingly agree to take the same; and in accordance with such arrangement, the said Nash conveyed that part of said property which lies in the fourth ward to this defendant, and assigned to this defendant the contract so as aforesaid entered into with the said company by written assignment, a copy whereof is hereunto annexed, marked "B," on or about the 24th day of September, A. D. 1855. The conveyance so made as afore-
478 said, by the said Nash to this defendant, was made under the circumstances for the consideration and in the manner aforesaid, and no consideration whatever was paid to the said Nash by this defendant, or any other person to his knowledge, except as aforesaid.

And this defendant, further answering, says that he did, on or about the 31st day of October, A. D. 1855, convey to the said James Ludington one undivided one-third of all that part of said property which lies in the fourth ward of said city; and on or about the 12th day of August, A. D. 1856, he conveyed to the said Ludington one undivided third of all that portion of said property which lies in the fifth ward of said city; and that the said James Ludington paid to this defendant therefor the sum of eight thousand six hundred and thirty-three dollars and twenty-six cents; that said sum was paid at the office of the said Ludington, as follows, to wit: five thousand dollars thereof was paid in the full paid stock of said company, one thousand dollars in a farm mortgage bond of the company, and the remaining sum of two thousand six hundred and thirty-three dollars and twenty-six cents in two promissory notes of the said Ludington; that this defendant made use of the said farm mortgage bond and promissory note in his business, as he was in the habit of using other like property, and that the same have not in any way, or under any cover or devise whatever, returned to the said Ludington, or to any person for his benefit, with this exception, that the two promissory notes so as aforesaid made by the said Ludington to this defendant, for two thousand six hundred and thirty-three dollars and twenty-six cents of said consideration, have been paid, and upon the payment thereof, were surrendered to the said Ludington; and the said sum

of five thousand dollars in the stock of said company, was about the time when the title of the property so as aforesaid purchased from George H. Walker was perfected in said company, redelivered to the said Ludington, and by him paid over to the said company on the execution of the deed of the company as aforesaid to the said Nash, on the 14th day of July, A. D. 1856, or about that time.

And this defendant, further answering, says that he claims to own, and believes he does own, one undivided third part of said real estate, subject to the encumbrance and defects of title resting against the same, and he believes that the said Ludington claims a like interest therein; but he is not aware, and does not believe that the said Kilbourn claims to have or hold any interest whatever therein. That the value of the interest which this defendant claims in said property is, in his opinion, about twenty thousand dollars; that the value of the interest claimed by the said Ludington is, in the opinion of this defendant, about twenty thousand dollars; and this defendant believes that the said Byron Kilbourn claims no interest therein whatever, of any value; and he further says, that the aggregate value of said lands, in their present state and condition, is, in his opinion, sixty thousand dollars; that large expenditures have been made thereon, since the said company conveyed the same, in im-
479 provements; and that the said lands are now worth much more than they would be in the condition they were in at the time when the said company contracted to sell the same as aforesaid.

And this defendant, further answering, says that he is informed and believes, and therefore admits, that the said La Crosse and Milwaukee Railroad Company did, on or about the 30th day of September, A. D. 1857, make and deliver an instrument in writing to the said Freeman, a copy whereof is annexed to the answer of the said company to said bill of complaints, and marked "Schedule K," and that the same was re-executed for the consideration and purposes appearing on the face of said instrument. And that he does not believe that there is any secret arrangement or understanding that any other person than the said Freeman should be interested in, or in any way share the profits or avails of said instrument; but he confidently believes that the same was executed for the legitimate and honest purpose appearing on its face, and for no other purpose whatever.

And this defendant prays he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MOSES KNEELAND.
H. L. PARMER,
Solicitor for Defendants.
BUTTLER & BUTTRICK,
Of Counsel.

DISTRICT OF WISCONSIN, *ss:*

On this 4th day of December, A. D. 1857, personally appeared before me the above named Moses Kneeland, and made oath that he has heard read the foregoing answer by him subscribed, and knows

the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

J. P. C. COTTRILL,
U. S. Commissioner, Wisconsin.

Schedule A.

Articles of agreement made this eighth day of September, in the year eighteen hundred and fifty-five, between the La Crosse and Milwaukee Railroad Company, party of the first part, and C. D. Nash, party of the second part, witness as follows:

1st. Said party of the first part has this day sold to the said party of the second part all their estate, right, and interest in lot nine, (9,) ten, (10,) and eleven, (11,) in block three, (3;) and lots one, (1,) 480 two, (2,) and three, (3,) in block forty-seven, (47,) all in the fifth ward of the city of Milwaukee, for the price of fifteen thousand dollars.

2d. The said party of the second part agree to pay therefor the said sum of fifteen thousand dollars in full paid shares of the capital stock of the said party of the first part, that is to say, one hundred and fifty shares of said stock of one hundred dollars each, fully paid to the said party of the first part, upon the determination of a suit in chancery now pending in the circuit court of Milwaukee county, wherein George H. Walker is complainant, and the said party of the first part is defendant.

3d. The said party of the second part agrees to take charge of the said suit in chancery, and to conduct the same with all due diligence to a determination, at his own risk and expense.

4th. Upon the determination of the said suit, if there shall be a decree therein for the defendant, the said party of the first part shall, upon payment of the said sum of fifteen thousand dollars, as aforesaid, execute and deliver to the said party of the second part, a quit-claim deed of conveyance of all their right, title, and interest in the said lots of land, subject to all outstanding titles, equities, lien, and encumbrances, whether arising by grant, tax, sale, or otherwise.

5th. Upon the determination of the said suit, if there shall be a decree therein reinvesting the title to the said lots in the said complaint therein, or decreeing a reconveyance thereof by the said defendant therein, the said party of the first part shall, upon payment of the said sum of fifteen thousand dollars as aforesaid, assign over to the said party of the second part whatever money or securities the said complainant may be decreed to pay or deliver to the said defendant as a condition to such decree.

6th. In case of any compromise or adjustment of the subject-matter of the said suit between the said complainant therein and the said party of the second part, the said sum of fifteen thousand dollars shall become immediately payable in manner aforesaid.

In witness whereof the said parties have signed and sealed these presents the day and year first above written.

(Signed) STODDARD JUDD,
President of the L. C. and M. R. R. Co.
CHARLES D. NASH.

Sealed and delivered in the presence of—
P. M. JOHNSON.
S. C. JOHNSON.

For and in consideration of the sum of ten thousand dollars, to me in hand paid by Moses Kneeland, of the city of Milwaukee, the receipt whereof is hereby acknowledged, I, Charles D. Nash, of the same place, have sold, assigned, transferred, and set over, and do hereby sell, assign, transfer, and set over, unto him, the said Moses
481 Kneeland, all my right, title, interest, and estate in and to the contract or agreement hereunto annexed, and entered into between the La Crosse and Milwaukee Railroad Company and myself, and bearing date the eighth day of September, A. D. 1855, and in and to all and singular the real estate or other subject-matter therein described and set forth.

To have and to hold the same unto him, the said Moses Kneeland, his executors and administrators and assigns, but at his sole cost, risk, and expense.

Witness my hand and seal, this twenty-fourth day of September, A. D. 1855.

(Signed) CHAS. D. NASH. [L. S.]

In presence of—
E. S. HAGON.
H. L. PALMER.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

On this nineteenth day of October, A. D. 1855, before me, a notary public for said State, residing at the city and county of Milwaukee, personally appeared Charles D. Nash, to me known as the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein named.

(Signed) H. L. PALMER,
Notary Public, Milwaukee Co.

James Ludington's answer.

The district court of the United States for the district of Wisconsin, in chancery.

The separate answer of James Ludington, one of the defendants to the bill of complaint of Newcomb Cleveland, complainant, against the defendant, impleaded with the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, Selah Chamberlain, Charles D. Nash, and De Witt C. Freeman:

This defendant, now and at all times saving and reserving unto himself all and all manner of benefit and advantage of exception to

the many errors and insufficiency in the complainant's said bill of complaint contained, for answer thereto or to such parts thereto as he is advised it is material for him to make answer unto, he answers and says that he has been informed and believes, and therefore admits, that the said complainant recovered against the said La Crosse and Milwaukee Railroad Company at the time for the amount and in the manner alleged in said bill of complaint, but whether the
482 whole or any part thereof is still due and owing the said complainant, this defendant has no knowledge, and he leaves the complainant to his proofs in that behalf.

And this defendant, further answering, says that he has no knowledge in respect to the said La Crosse and Milwaukee Railroad Company suffering judgment to pass against it, as stated in said bill of complaint, nor does he know anything of the cause, claim, contract, debt, or consideration upon which the same was confessed; nor is he able to say whether the said company was, on the day of the entry of said judgment, indebted to the said Chamberlain or not, and if indebted at all, this defendant does not know, and has not the means of informing himself of the amount of such indebtedness, and he cannot therefore give any of the items or particulars of such indebtedness, if any there are; nor can he state how such indebtedness accrued, if it accrued at all.

This defendant further says that he has no knowledge whatever as to whether there was any transactions or dealings between the said Chamberlain and the said La Crosse and Milwaukee Railroad Company at the time of the entry of said judgment, or at any previous time; nor does he know or can he state what was then, or at any other time, the state of accounts between the said company and the said Chamberlain, or what was the state or balance of such transaction; nor has he any knowledge or information of any claim on the part of said company against the said Chamberlain for moneys, bonds, mortgages, stock, or other things of value, or paid to the said Chamberlain by the said company, and he is equally ignorant of the claim of the said Chamberlain against the said company, when or how it accrued, or whether any or what part thereof has been paid. This defendant, however, says that he is informed and believes that the said Chamberlain has done for the said company a large amount of work in the construction of its road, and that there have been dealings and transactions between the said company and the said Chamberlain to a very large amount, growing out of such work, but the particulars of such work and dealings and transactions this defendant does not know, and he has no means of information in relation thereto.

And this defendant, further answering, says that he does not know whether any other person or persons are, directly or indirectly, interested in the said judgment so suffered as aforesaid; and he does not know whether the said Byron Kilbourn and Moses Kneeland, or either of them, or any other person, has any interest, direct or indirect, in said judgment; and he is also ignorant of any secret or other arrangement or understanding between the said Kilbourn and Knee-

land, or either of them, by which they, or either of them, should enjoy or share the said judgment, or any part thereof, if the same should be collected.

And this defendant expressly avers that he has not, never had, nor never expects to have, any interest whatever in said judgment;
483 and that there is not now, never was, and this defendant has no expectation that there ever will be, any arrangement or understanding that he should, in case of the collection of said judgment, or in any other event, enjoy or share in any way, or at any time, any part of said judgment, and he explicitly disclaims any interest therein.

And this defendant, further answering, says that he is informed and believes that the said La Crosse and Milwaukee Railroad Company, on the 15th day of June, A. D. 1856, was the owner and seized in fee, of lots nine, ten, and eleven, in block three, and lots one, two, and three, in block forty-seven, in the fifth ward of said city of Milwaukee, subject to some outstanding tax titles, and an interest, or pretended interest, of one James D. Doty therein.

That on or about the 8th day of September, A. D. 1855, the said La Crosse and Milwaukee Railroad Company claimed to own and possess lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, in block 155; ⅛ of block 157, except lot 8 therein, and ⅛ of bayou adjoining the same; ⅓ of lots 8, 9, 16, and 17, and lots 10, 12, 13, and 14, and the east half of lot 15, in block 158, and lots 1 and 4, in block 156, all in the fourth ward of the said city of Milwaukee; that such title as said company then had in and to the lots last aforesaid, as also such title as it then had in and to the said real estate in the fifth ward of said city hereinbefore described, it acquired from the Milwaukee, Fond du Lac, and Green Bay Railroad Company, under and by virtue of "An act to incorporate the La Crosse and Milwaukee Railroad Company," approved April 2, 1852, and a contract entered into by and between the said Milwaukee, Fond du Lac, and Green Bay Railroad Company and the La Crosse and Milwaukee Railroad Company, under and by virtue of said act, by which the two companies aforesaid became one consolidated company, under the name of the La Crosse and Milwaukee Railroad Company.

And this defendant, further answering, says that the title of said company to said lot thirteen, in block 158, has entirely failed; and he is informed and believes that the title to lot 14, and the east half of lot 15, in said block 158, and to lots 4 and 10, in block 155, in the fourth ward of said city of Milwaukee have also entirely failed. And this defendant also states, on information and belief, that the title of said company to all the other lots aforesaid was more or less defective. That on the 8th day of September, 1855, in the opinion of this defendant, the value of the said lots, lying in the fourth ward of the city of Milwaukee, subject to the tax title, defect of title, and other encumbrances thereon, was respectively as follows, to wit: of lot one, in block 155, six hundred dollars; of lots five and nine, in said block, one thousand dollars; of lots thirteen and fourteen, in said block, eight hundred dollars; of lot six, in said block, three

hundred and fifty dollars; of lot two, in said block, four hundred dollars; of lots eight, eleven, and twelve, in said block, one thousand and fifty dollars; of lots four and seven, in said block, five
484 hundred dollars; of $\frac{1}{8}$ of block 157, except lot 8 therein, and $\frac{1}{8}$ of the bayou adjoining the same, one thousand and fifty dollars; of one-third of lots 8, 9, 16, and 17, in said block 158, two thousand dollars; of lots 10, 12, 13, and 14, and the east half of lot 15, in said block 158, four thousand dollars, subject to the encumbrances and defects of title; of lot four, in said block 156, one hundred and fifty dollars.

This defendant is informed and believes that the property aforesaid, lying in the fourth ward of said city of Milwaukee, was purchased in the summer and fall of the year, A. D. 1853, from various individuals, by the said Milwaukee, Fond du Lac, and Green Bay Railroad Company, and was paid for principally in the stock of said company; that this defendant, in estimating the value thereof, has stated the value of each and every parcel of the same at about the sum which was so as aforesaid paid therefor respectively; and in making his said estimate he has had in view the state and condition of the title of said property, the tax titles thereon, and the encumbrances resting against the same; and he verily believes that the valuation which he has placed thereon is all that the same were reasonably worth on the said 8th day of September, A. D. 1855, subject to the then encumbrances and defect of title.

This defendant further says, that in his opinion the value of said lots nine, ten, and eleven, in block three, and one, two, and three, in block forty-seven, in the said fifth ward, on the said fifteenth day of June, A. D. 1856, was respectively as follows, to wit, of said lots nine, ten, and eleven, four thousand dollars each; and of lots one, two, and three, one thousand dollars each.

The six lots last aforesaid were, as this defendant is informed and believes, purchased in the summer or fall of the year A. D. 1853, by the Milwaukee, Fond du Lac, and Green Bay Railroad Company, from Col. George H. Walker, for the sum of fourteen thousand dollars in the stock of said company.

That the said Byron Kilbourn, Moses Kneeland, and this defendant, were directors of said company at the time when it was so as aforesaid interested in said property. This defendant, further answering, says that the said Moses Kneeland and this defendant were not on the said fifteenth day of June, or any other day, to the knowledge or belief of this defendant, appointed a committee either by the board of directors of said company or the executive committee thereof, to sell or dispose of said lands or any part thereof, and that this defendant and the said Kneeland did not at any time make a contract of sale either in writing or by parol, which was subsequently ratified and executed by the said company defendant, agreeing to sell this said land to the said Charles D. Nash, but this defendant is informed and believes that the fact is, that on or about the third day of September, A. D. 1855, the said Charles D. Nash submitted a proposition in writing to the president and directors of said La Crosse

and Milwaukee Railroad Company to buy all of said property,
485 offering for the same the sum of twenty-five thousand dollars, ten thousand dollars in the farm mortgage bonds of the company, and fifteen thousand dollars in the full paid stock of the company; that said proposition was considered by the executive committee of the board of directors, at a meeting held at the office of the company on the 7th day of September, A. D. 1855, at which meeting the following members of said committee were present, to wit, Messrs. Judd, Kilbourn, Kneeland, Goodrich, and Townsend, and upon consultation of said proposition the same was accepted by said committee by the adoption of a resolution of which the following is a copy:

"*Resolved*, That the proposition of C. D. Nash, submitted in writing under date of the 3d inst., for the purpose of property, real estate, in the 4th and 5th wards, be accepted."

That on the eighth day of September, A. D. 1855, in pursuance of the contract so as aforesaid made between the La Crosse and Milwaukee Railroad Company and the said Nash, the said company executed and delivered to the said Nash a quitclaim deed of all the aforesaid property in the fourth ward of said city of Milwaukee, and received from the said Nash in payment therefor the sum of ten thousand dollars in the farm mortgage bonds of said company, and on the same day, to wit, on the said eighth day of September, the said company entered into a contract in writing with the said Nash, for the sale and conveyance of all the said property in the fifth ward of said city, a copy of which said contract is hereunto annexed and marked Schedule A, and on or about the 14th day of July, A. D. 1856, the said La Crosse and Milwaukee Railroad Company, in pursuance of said contract, executed and delivered to the said Nash a quitclaim deed for all the property last aforesaid.

This defendant further says that the action of the executive committee herein before set forth, had on the seventh day of September, A. D. 1855, accepting the proposition of the said Nash to purchase said property, was approved by the board of directors of said company at a quarterly meeting of said board, held on the seventeenth day of October, A. D. 1855; and that the said quitclaim deed executed to the said Nash, on or about the 14th day of July, A. D. 1856, was executed and delivered by order of the executive committee, and pursuant to a resolution of said committee, adopted on the 11th day of July, A. D. 1856, and that such action of the executive committee was appoved by the board of directors of said company at a quarterly meeting thereof held on the sixteenth day of July, A. D. 1856, as appears by the record of proceedings of the said board of directors.

And this defendant, further answering, says that he is informed and believes, that on or about the 24th day of September, A. D. 1855, the said Moses Kneeland purchased the interest of the said Nash in all of said property, and received from the said Nash a quitclaim deed of all of said property lying in the fourth ward of said
486 city, and an assignment of the contract aforesaid for the sale and conveyance of the said property in the fifth ward of said

city; and that the said Kneeland, on the said 14th day of July, upon the execution and delivery of the deed by said company to the said Nash, the said Kneeland having therefrom acquired the title of said Nash, paid over and caused to be paid over and delivered to the said company fifteen thousand dollars in its full paid stock; and that the said Nash, on the 15th day of July, 1856, executed and delivered to the said Kneeland a quitclaim deed of the property described in said contract.

This defendant is informed and believes that from the time when the said company acquired title to the said real estate as aforesaid, it was anxious to dispose of the same, and made frequent efforts to effect a sale thereof, for the purpose of diminishing its liabilities and relieving itself of anxiety in relation to the encumbrances upon the same, and the defective titles thereto.

And this defendant believes that the sale of said property to the said Nash was made in good faith, and for no purpose of fraud whatever; that the price paid therefor was all that the same was reasonably worth, and as much as could have been obtained therefor from any other person if sold in a body; and that property being such as the company did not require and could not use for the purpose of its business and road, the interests and good of said company were consulted and subserved by said sale.

This defendant expressly denies that it was directly or indirectly understood at the time of such sale that the said Nash should at any time thereafter convey any part of said property to this defendant; but whether it was understood that any part thereof should at any time be conveyed by the said Nash to the said Kilbourn, or the said Kneeland, this defendant does not know and cannot say.

This defendant is informed and believes that the said Nash did convey all of said property to the said Kneeland as hereinbefore stated, but upon what precise terms, and for what precise sum or consideration this defendant is not advised and cannot say. Nor does this defendant know what the said Nash did with the consideration paid to him by the said Kneeland for such conveyance, and what disposition he made of the same. Nor whether the same did or not, under some cover or device, return to the said Kneeland or some other person for his use. And this defendant further says that he does not know whether any consideration was paid to the said Nash, and if so, whether it was all paid by the said Kneeland or not, or how the same was paid, but this defendant expressly denies that any part of the same was paid by him directly or indirectly. And this defendant, further answering, says that the said Moses Kneeland did, on or about the 31st day of October, A. D. 1855, convey to this defendant one undivided one-third part of said real estate, in the 4th ward of said city; and on or about the 12th day of August, A. D.
487 1856, he conveyed to this defendant one undivided third of all that part of said real estate which is situated in the fifth ward of said city, and that this defendant paid to the said Moses Kneeland therefor the sum of eight thousand six hundred and thirty-three dollars and twenty-six cents; that said sum was paid at the office

of this defendant, as follows, to wit: five thousand dollars thereof was paid in the full paid stock of said company, one thousand dollars in a farm mortgage bond of said company, and the remaining sum of two thousand six hundred and thirty-three dollars and twenty-six cents in two promissory notes of this defendant; but what use the said Kneeland made of the same this defendant does not know and cannot say, except that the said Kneeland returned to this defendant the sum of five thousand dollars in stock, and this defendant paid said sum over directly to the company, on the title of the property in the fifth ward being perfected in the company, and the conveyance of said property by the company to the said Nash being executed, on or about the 14th day of July, A. D. 1856; and the said promissory notes were afterwards paid by this defendant, and upon the payment thereof were surrendered to him by the said Kneeland.

And this defendant claims to own one undivided third part of said real estate, subject to the encumbrances and defect of title resting against the same, and he is informed and believes that the said Kneeland claims a like interest therein, but he is not aware and does not believe that the said Kilbourn claims to hold or has any interest whatever therein. That the value of the interest which this defendant claims in said property is, in his opinion, about twenty thousand dollars, and the value of the interest claimed by the said Kneeland is about the same sum; and this defendant believes that said Kilbourn claims no valuable interest therein whatever. And he further says that the aggregate value of said lands in their present state is, in his opinion, sixty thousand dollars; that large expenditures have been made thereon since the said company parted with its title thereto, in making valuable improvements thereon, and that the said lands are now worth much more than they would be in the condition they were in at the time when the said company contracted to sell the same as aforesaid.

And this defendant having fully answered said bill, prays that he may hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JAMES LUDINGTON.
BUTTLER, BUTTRICK & COTTRILL,
Solicitors.

A. R. R. BUTTLER, *Counsel.*

488 DISTRICT OF WISCONSIN, *ss:*

On this 4th day of December, A. D. 1857, personally appeared before me the above-named James Ludington, and made oath that he has heard read the foregoing answer by him subscribed, and knows the contents thereof, and that the same is true, except as to those matters which are therein stated to be upon his information and belief, and as to those matters he believes it to be true.

J. P. C. COTTRILL,
U. S. Commissioner, Wisconsin.

Articles of agreement, made this eighth day of September, in the year eighteen hundred and fifty-five, between the La Crosse and Milwaukee Railroad Company, party of the first part, and C. D. Nash, party of the second part, witness as follows:

1st. Said party of the first part has this day sold to the said party of the second part, all their estate, right, and interest in lots nine, (9,) ten, (10,) and eleven, (11,) in block three, (3,) and lots one, (1,) two, (2,) and three, (3,) in block forty-seven, all in the fifth ward of the city of Milwaukee, for the price of fifteen thousand dollars.

2d. The said party of the second part agrees to pay therefor the said sum of fifteen thousand dollars in full paid shares of the capital stock of the said party of the first part; that is to say, one hundred and fifty shares of said stock of one hundred dollars each, fully paid, to the said party of the first part, upon the determination of a suit in chancery now pending in the circuit court of Milwaukee county, wherein George H. Walker is complainant and the said party of the first part is defendant.

3d. The said party of the second part agrees to take charge of the said suit in chancery, and to conduct the same with all due diligence to a determination, at his own risk and expense.

4th. Upon the determination of the said suit, if there should be a decree therein for the defendant, the said party of the first part shall, upon payment of the said sum of fifteen thousand dollars, as aforesaid, execute and deliver to the said party of the second part a quit-claim deed of conveyance of all their right, title, and interest in the said lots of land, subject to all outstanding titles, equities, liens, and encumbrances, whether arising by grant, tax, tax sale, or otherwise.

5th. Upon the determination of the said suit, if there shall be a decree therein reinstating the title of the said lots in the said complaint therein, or decreeing a reconveyance thereof by the said defendants therein, the said party of the first part shall, upon the payment of said sum of fifteen thousand dollars as aforesaid, assign over to the said party of the second part whatever money or
489 securities the said complainant may be decreed to pay or deliver to the said defendant as a condition to such decree.

6th. In case of any compromise or adjustment of the subject-matter of the said suit between the said complainant therein and the said party of the second part, the said sum of fifteen thousand dollars shall become immediately payable in manner aforesaid.

In witness whereof the said parties have signed and sealed these presents the day and year first above written.

(Signed) STODDARD JUDD,
Pres. of the L. C. and M. R. R. Co.
CHARLES D. NASH.

Sealed and delivered in the presence of—
P. M. JOHNSON.
S. C. JOHNSON.

DECEMBER 7, 1857.

This day came the defendants, by their counsel, and on their motion the answer of the La Crosse and Milwaukee railroad was withdrawn from the files.

DECEMBER 14, 1857.

This day came the defendants, the La Crosse and Milwaukee Railroad Company and Byron Kilbourn, by their solicitor, Mr. Palmer, and filed their answers.

Which said answer of the La Crosse and Milwaukee Railroad Company is as follows:

Answer of La Crosse and Milwaukee Railroad Company.

The district court of the United States for the district of Wisconsin, in chancery.

The separate answer of the La Crosse and Milwaukee Railroad Company, one of the defendants to the bill of complaint of Newcomb Cleveland, complainant, against this defendant, impleaded with Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Selah Chamberlain, and Charles D. Nash, defendants.

This defendant, now and at all times hereafter saving and reserving unto itself all and all manner of benefit of exception to the many errors and insufficiencies and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised is material or necessary for it to make answer unto, answering says, that this defendant admits the said complainant did, on or about the 7th day of October, one thousand eight hundred and fifty-seven, in this court, recover a judgment against this defendant for the sum of one hundred and twelve thousand two hundred and seventy-one dollars and seventy-six cents, as is in the said
490 bill alleged; and this defendant is informed and believes, and therefore admits, that the said complainant, on or about the 22d day of October, one thousand eight hundred and fifty-seven, sued and prosecuted out of the said court, a writ of fieri facias upon the said judgment, directed and delivered as is in the said bill of complaint in that behalf alleged.

This defendant, further answering, admits that no part of the said judgment has been paid, and that the whole amount thereof remains unpaid.

And this defendant, further answering, admits it to be true that this defendant did, on or about the twenty-sixth day of September, A. D. 1857, make, seal, execute, and deliver to the said defendant, Selah Chamberlain, a certain instrument in writing, or contract, and which this defendant believes to be the same which is mentioned and alluded to in the said complainant's bill of complaint as a pretended lease, the terms whereof are partially set forth in the said bill of complaint, but this defendant denies that it made, sealed, or delivered the said instrument in writing, or contract, designing or intending to injure, delay, cheat, or defraud the creditors of the said

of E. W. Woodward, chief engineer of the said railroad company, a true copy whereof is hereto annexed, and marked "Schedule C."

In addition thereto, the said defendant, Selah Chamberlain, did and performed, in and about said work, extra labor and services, and furnished and provided means and materials therefor, and for which bills and invoices were from time to time furnished by him to this defendant, the aggregate whereof appears in the account hereinafter referred to and hereto annexed; but the items and particulars of such extra labor, services, and materials are shown by the copies of such bills and invoices, hereto annexed, and marked, respectively, papers "1," "2," "3," "4," and "5," and "1a," "2a," "3a," "4a," "5a," "6a," "7a," "8a," The actual aggregate amount accruing to the said defendant, Chamberlain, for work done and materials furnished, in and about the work upon the said eastern division, is about the sum of one hundred and twenty-four thousand eight hundred and fifty-six dollars and sixty-four cents; and all the payments made by this defendant thereon appear in the general account of the said defendant, Selah Chamberlain, hereinafter more particularly mentioned and referred to.

This defendant, further answering, says that on or about the 20th day of January, eighteen hundred and fifty-seven, this defendant entered into another contract with the said defendant, Selah Cham-
493 berlain, for the construction, by the said Chamberlain, of that portion of the railroad of the said La Crosse and Milwaukee Railroad Company known as the "western division," and extending from Portage City aforesaid to La Crosse, in Wisconsin, the terminus of the said road, for the prices and upon the terms and conditions expressed in said contract, a true copy whereof is hereto annexed, marked "Schedule D," to which contract this defendant craves leave to refer.

That the said defendant, Selah Chamberlain, entered upon the work contemplated by the said contract last mentioned in the month of February thereafter; and continued to prosecute the same under and pursuant to said contract, and another contract or agreement supplemental thereto, and modifying the said original contract in some particulars, entered into between this defendant and *and* the said defendant Selah Chamberlain, on or about the 13th day of April, A. D. 1857, a true of which said supplemental contract is hreto annexed, and marked "Schedule E." and to which, when produced and proved as this court shall direct, this defendant craves leave to refer, until about the 26th of September last past, when said original and supplemental contracts were further modified by a contract or agreement in writing, entered into by and between this defendant and said defendant Selah Chamberlain, on that day, a true copy whereof is hereto annexed, and marked "Schedule F," and which this defendant is ready to produce and prove as this honorable court shall direct, and to which, when produced and proved, this defendant craves leave to refer. And this defendant avers that the value of the work, labor, and services by the said Chamberlain performed and rendered under said construction contract and the said contracts

supplementary thereto, and extra work by him done under the direction of the chief engineer, a copy of which order is hereto annexed, and marked Schedule R, governed by the rates and prices stipulated for in said contract and fixed by said engineer, and inclusive of what remained to be done by the said defendant, Chamberlain, to complete the work to New Lisbon, as contemplated in the said contract hereinbefore set forth, and marked "Schedule D," amounted to the sum of one million seventy-six thousand and four hundred and fifty dollars; and the nature, character, and particulars of such work appears in the final estimate of the said E. W. Woodward, chief engineer, a true copy whereof is hereto annexed, and marked "Schedule G," and the payments which have been made thereon truly appear in the general account of the said Chamberlain with this company, a copy of which general account is hereto annexed, and marked "Schedule H."

The amount of work remaining undone and necessary to be done to complete the said road to New Lisbon as aforesaid, according to said contracts as modified, was, as appears by the estimate of the said E. W. Woodward, chief engineer as aforesaid, on the said
494 first day of October, A. D. 1857, in value estimated by the rates and prices stipulated in said contracts, the sum of fifty-six thousand five hundred dollars, which sum was deducted in the settlement and of the accounts between this defendant and the said Chamberlain, and was not and is not included in the said judgment so confessed in favor of the said Chamberlain as aforesaid. A true copy of the estimate of the said E. W. Woodward, chief engineer as aforesaid, of the said incomplete work is hereunto annexed, and marked "Schedule I."

And this defendant avers that the amount expressed in the said judgment so confessed to the said Selah Chamberlain, was the amount actually ascertained to be due to the said Chamberlain on the said 1st day of October, A. D. 1857, from this defendant for work, labor, and services and materials furnished under said contracts, according to the terms, stipulations, and prices therein contained.

And this defendant, further answering, says that this defendant was largely in arrear to the said Chamberlain during the months of July, August, and September last past, but the aggregate of which arrearages were not ascertained accurately, from the fact that no final estimate had been made of the work done by him, and for the reason that the monthly estimates provided for in the said construction contracts, were, as is usual in such cases, only approximate, and did not exhibit the actual amount of work done in each preceding month. That this defendant was, however, all the while largely in arrear to the said defendant, Chamberlain, and during the said months of July, August, and September, said company was struggling to pay off its said indebtedness to said Chamberlain, and was making strenuous exertions to raise funds for that purpose; that failing to raise funds with sufficient rapidity and in sufficient sums to pay off the said sums accrued and accruing to said Chamberlain from month to month, according to the terms of the contracts aforesaid, between

the said defendant, Chamberlain, and this defendant, the said company was unable to do more than to make partial payments to said Chamberlain from time to time, as the said company was able to obtain means for that purpose. The said Chamberlain continued work on said contract, notwithstanding the failure of the said company to pay his estimates according to the terms of his contract, at the earnest solicitation of the officers of this defendant, the said officers believing and expecting that the said company would be able to realize the requisite amount of money to pay him the amount which might become due to him, and intending to make such payment whenever and as soon as the said company shall be able to do so. That the said defendant, Chamberlain, made frequent and repeated applications to this defendant for payment of the amount, or on account of the amount due to him as aforesaid, and for security for the ultimate payment thereof. That about the first day of September, A. D. 1857,
495 the said Chamberlain again urged the officers of the said company to give him security for the payment of the amount due him, and claimed security upon the railroad iron belonging to the said company, a very large quantity of which said company had on hand.

That this defendent did not comply with the request of said Chamberlain, but mortgaged the said iron to the trustees named in a mortgage theretofore executed by this defendant on the western division of its road, to secure certain bonds issued thereunder, as the said company deemed it to be its duty to do. That the said company then confidently and reasonably expected to be able to negotiate some of its securities, and thereby realize funds with which to pay said Chamberlain the amount which had already accrued for work performed by him, and also to pay him for such work as he should thereafter perform according to the terms of his contract, but that owing to events which transpired during the month of September, and mainly to the utter prostration of all credit and financial embarrassments which spread over the whole country, it became impossible for the company to make any such negotiation or to realize sufficient funds for that purpose, and hence this defendant was unable to keep its engagements with the said defendant, Chamberlain. That said Chamberlain again applied to the said company for a settlement and payment of the amount so due to him as aforesaid, or for some reasonable security for the payment thereof, and thereupon, after much negotiation and after much deliberation, the said company concluded to make, and did make, the contract hereinbefore set forth, and marked "Schedule A," with said Chamberlain, for the purpose of providing thereby for the payment of the indebtedness therein specifically mentioned, and for the purpose of providing a security and means of payment to the said defendant Chamberlain for the debt so due to him as aforesaid.

And this defendant, further answering, says that owing to the unsettled condition of the business and financial affairs of the country, and the inability of the said company thence resulting to negotiate its securities, and thereby raise funds for the prosecution of the

construction of the said road, within the time and according to the terms of the said contract between this defendant and said Chamberlain, a copy whereof is set forth in "Schedule D," it was deemed advisable to extend the time for the completion of the said road to La Crosse indefinately, and thereupon negotiations were commenced between this defendant and the said defendant Selah Chamberlain, which resulted in the making of the said contract between this defendant and the said Chamberlain, a copy whereof is hereto annexed, "Schedule F;" and in consideration of such extension of the time for the construction of the said western division of said road from New Lisbon to Portage City, and of the damages which the said Chamberlain would sustain by reason of such extension, and by loss on teams, materials, tools, machinery, and in other ways; and also in consideration of the mode in which the said Cham-
496 berlain was to be paid the amount then due to him, and the amount to become due to him for finishing the said road to New Lisbon aforesaid, as provided in the contract or agreement, a copy whereof is set forth in "Schedule A," hereto annexed; and in consideration of the failures and delays of this defendant in making payments to the said Chamberlain upon estimates theretofore due; and in further consideration of the services, risks, and personal expenses of the said Chamberlain in the operation and management of the said railroad as referred to and more particularly set forth in the said two contracts, copies whereof are set forth in schedules "A" and "F," hereto annexed, this defendant agreed to pay the said Chamberlain, in addition to the sum for which the said judgment was confessed, the liquidation sum of two hundred thousand dollars, which sum was mutually agreed upon between this defendant and said Chamberlain, as an equivalent for the aforesaid considerations.

This defendant, further answering, says that immediately after the execution of the said contracts, copies of which are set forth in schedules "A" and "F," hereto annexed, and before the suffering of the said judgments, the said company and the said defendant Chamberlain entered upon a settlement and adjustment of the accounts between them for and concerning the work and labor done and performed and materials furnished and provided by said Chamberlain to and for the said company upon its road, under and pursuant to the said several contracts, copies whereof are set forth in schedules "B," "D," "E," and "F;" and for extra work and materials by said Chamberlain furnished and provided, which accounting and adjustment occupied several days, and involved an examination of estimates and accounts as contained in the books of this defendant, and of the said defendant Chamberlain.

That although the said defendant Chamberlain claimed that a much larger amount was due to him from the said defendant, the said sum of six hundred and twenty-nine thousand eighty-nine dollars and seventy-two cents was finally agreed upon as the amount then due to the said defendant Chamberlain for completed work, and exclusive of the said two hundred thousand dollars liquidated damages allowed to the said Chamberlain, and agreed upon as aforesaid, and

for which sum it was agreed that the promissory note of the said La Crosse and Milwaukee Railroad Company should be executed and delivered to the said defendant, Selah Chamberlain, accompanied with a warrant of attorney for the entry of judgment thereon, and which was accordingly done. That the debit side of the general account between the said company and the said Chamberlain, a copy whereof is hereto annexed, and marked Schedule "H," contains a full and true statement of the claims of the said company against the said Chamberlain for money, bonds, mortgages, stock, or other things of value loaned or paid to or in any way or manner intrusted with the said Chamberlain, by this defendant, at the time of suffering
497 the said judgment, except as hereinafter set forth, and the credit side of the said general account, and the copy of the estimates set forth in Schedule "C," papers "1," "2," "3," "4," "5," and "1a," "2a," "3a," "4a," "5a," "6a," "7a," "8a," and Schedule "I" exhibit truly the items and claims of the account which the said Chamberlain had against this defendant, as this defendant verily believes, and the dates, amount, and nature thereof, and when and where, and for what they accrued.

That the said accounting, settlement, and adjustment between the said Chamberlain and this defendant, hereinbefore set forth, was had in the presence of the president, vice president, secretary, and chief engineer of the said company, and the board of directors or a majority of the board of directors were present a part or all of the time.

That such settlement was conducted on the part of this defendant by the board of directors thereof, such settlement was had at the office of the La Crosse and Milwaukee Railroad Company in Milwaukee, and was concluded on the said 2d day of October, A. D. 1857, and a day or two was occupied in making such settlement, and adjusting such accounts, and agreeing upon the terms thereof; and the items and charges thus settled and accounted on each side are shown in the general account between the said Chamberlain and this defendant, a copy whereof is hereto annexed, marked Schedule H, and and upon such settlement a balance was found in favor of said Chamberlain, as hereinbefore stated, of the said sum of six hundred and twenty-nine thousand eighty-nine dollars and seventy-two cents, for which said note and warrant of attorney were given to said Chamberlain as hereinbefore stated.

This defendant, further answering, denies the said defendant has any knowledge that any person or persons, other than the said Chamberlain, were or are directly or indirectly interested in the said judgment so confessed in favor of said Chamberlain, and this defendant denies that the said Byron Kilbourn, Moses Kneeland, and James Ludington, or any other person, have any interest, directly or indirectly, in said judgment so suffered as aforesaid to the knowledge or belief of this defendant; and this defendant avers that there then was and is no understanding or arrangement, secret or otherwise, to the knowledge or belief of the said defendant, that the said Byron Kilbourn, Moses Kneeland, and James Ludington, or either of them,

should or shall enjoy a share in any way whatever, or at any time whensoever, any part of said judgment if the same shall be collected.

And this defendant, further answering, says that some time in the month of February, A. D. 1857, the said defendant, Chamberlain, submitted to this defendant an application in writing for one hundred and fifty thousand dollars of the bonds the said company commonly called land grant bonds, being the bonds of this corporation secured by a mortgage on that portion of the road lying west of Portage City, and upon the title and interest of this defendant present and
498 prospective to certain lands granted to said company to aid in the construction of said road, to be applied as a payment by this defendant on the final settlement of accounts between this defendant and the said Chamberlain, when the said railroad should be completed to La Crosse; said bonds to be delivered to the said Chamberlain on certain conditions, in the said application named, a true copy of which said application hereto annexed and marked Schedule Q; that said application was accepted and agreed to by this defendant, and bonds as therein described were issued and delivered to said Chamberlain, of the nominal amount of one hundred and twenty-nine thousand dollars and twelve hundred and ninety shares of privilege stock so-called, was issued to said Chamberlain in connection therewith, and pursuant to said application as follows: on the 19th March, 1857, sixty-five of such bonds and six hundred and fifty shares of said stock were issued and delivered to said Chamberlain; and on the 2d day of April, A. D. 1857, sixty-four of like bonds and six hundred and forty shares of said stock were issued and delivered to said Chamberlain; that all said bonds were sold to and were chargeable to the said Chamberlain at eighty cents, and said stock at five per cent. of the amount thereof, that being the amount required to be paid on the issue of said stock, and that the same amounted in the aggregate to one hundred and nine thousand six hundred and fifty dollars, which sum was and is chargeable to the said Chamberlain, and to be accounted for by him upon the completion of his said contract for the construction of said road, and upon the final settlement of the accounts between said Chamberlain and this defendant therefor; and that the said sum was not deducted from said Chamberlain's account against this defendant, on the adjustment of accounts at the time the said judgment was confessed as aforesaid, and if the said sum of one hundred and nine thousand six hundred and fifty dollars had been deducted from the amount due said Chamberlain by this defendant on the said 2d day of October, A. D. 1857, at the time of the adjustment of accounts between them and the giving of the said note, upon which the said Chamberlain's judgment was entered, there would then have remained a balance due to the said Chamberlain from this defendant of ninety thousand three hundred and fifty dollars over and above the amount for which said judgment was confessed.

This defendant, further answering, states that this defendant was and is legally liable to pay to the several holders thereof, from time

to time as the same shall become due, the interest warrants or coupons upon nine hundred and fifty thousand dollars of the bonds of this company heretofore issued, issued by this defendant and secured by a first mortgage on so much of the road of this defendant as extends from the city of Milwaukee to Portage City, bearing date the 13th day of June, A. D. 1854, and also the sinking fund provided for by a supplemental mortgage ordered of trust, bearing date
499 February 6th, 1856, mentioned and referred to in the said agreement between this defendant and the said Chamberlain, a copy of which is set forth in the schedule hereto annexed, marked A; that the said bonds were issued and used to purchase materials and raise funds used in the construction of the road of this defendant and the principal and interest thereof, and the sinking fund so provided for the ultimate payment of said bonds, constitute a just, valid, and meritorious debt against this defendant.

That this defendant is legally liable to pay the coupons or interest warrants upon the one hundred and fourteen thousand dollars of the bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, and mentioned and provided for in and by the said contract, entered into between this defendant and said Chamberlain, a copy whereof is set forth in the said Schedule A, to the several holders thereof from time to time as the same become due, that such bonds were issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, to aid in the construction of the road of said company, and as this defendant is informed and believes the said bonds and the proceeds thereof were so used, and that by the consolidation of the said Milwaukee, Fond du Lac, and Green Bay Railroad Company with this defendant, this defendant became, and was, and is liable to pay and discharge the same, and that the interest on such bonds is a just, equitable, and valid debt against this defendant, and the payment of such bonds, principle, and interest is secured by a mortgage on a portion of the road of this defendant.

This defendant, further answering, avers that this defendant is liable and is legally, and equitably bound to pay the interest warrants or coupons upon the two hundred thousand dollars of bonds issued by the city of Milwaukee to this defendant, and mentioned in and provided for by the said agreement between this defendant and the said defendant Chamberlain, a copy of whereof is set forth in said Schedule A, to the holders thereof from time to time as the same shall become due. That said bonds were issued by the city of Milwaukee to aid in, and were used in the construction of the road of this defendant, and the payment thereof, both principal and interest is secured by a mortgage on a part of the road of this defendant, bearing date the 30th day of July, 1854, and that such bonds, and the interest thereon, are a just, valid, and equitable debt against this defendant.

This defendant, further answering, avers that it is liable, and legally and equitably bound to pay the interest warrants or coupons on the one million of dollars of the bond of this defendant, mentioned and described in the said agreement between this defendant and said

Chamberlain, a copy of which is set forth in said Schedule A. to the several holders thereof, as the same shall from time to time become due, that such bonds are secured by a mortgage covering that portion of the road of this defendant, extending from Milwaukee
500 to Portage City, and from the city of Watertown to Midland, and that the said principal and interest constitute a just, valid, and equitable debt against this defendant.

And this defendant, further answering, says that on the fifteenth day of June, A. D. 1856, the La Crosse and Milwaukee Railroad Company was seized in fee of lots nine (9,) ten (10,) and eleven (11,) in block three (3,) and lots one (1,) two (2,) and three (3,) in block forty-seven (47,) in the fifth ward of the city of Milwaukee, subject to some outstanding unpaid taxes, and subject to an interest or claim or pretended interest or claim of one James D. Doty therein.

That on or about the 8th day of September, A. D. 1855, the said La Crosse and Milwaukee Railroad Company claimed to own and possess lots one (1,) two (2,) four (4,) five (5,) six (6,) seven (7,) eight (8,) nine (9,) ten (10,) eleven (11,) twelve (12,) thirteen (13,) and fourteen (14,) in block numbered one hundred and fifty-five (155,) in the fourth ward of said city of Milwaukee; one-eighth part of block numbered one hundred and fifty-seven (157,) except lot eight, and one-eighth part of bayou adjoining the same in said fourth ward; one third of lots eight (8,) nine (9,) ten (10,) sixteen (16,) and seventeen (17,) and all of ten (10,) twelve (12,) thirteen (13,) and fourteen (14,) and the east ½ of 15 in block one hundred and fifty-eight (158,) and lots one (1) and four (4,) in block one hundred and fifty-six (156,) in said fourth ward. That such title as this defendant then had in and to the above described lots and real estate in the fourth ward of said city of Milwaukee, it acquired from the Milwaukee, Fond du Lac, and Green Bay Railroad Company, under and by virtue of an act to amend an act entitled "An act to incorporate the La Crosse and Milwaukee Railroad Company," approved April 2d, 1852, and a contract of consolidation entered into by and between this defendant and the said Milwaukee, Fond du Lac, and Green Bay Railroad Company, under and by virtue of said act, by which the two companies aforesaid became one consolidated company under the name of the La Crosse and Milwaukee Railroad Company. This defendant avers, upon information and belief, that the title to lot thirteen, in block one hundred and fifty-eight aforesaid, has entirely failed, and that the titles to lots fourteen (14,) and the east half of lot fifteen (15,) in block one hundred and fifty-eight (158,) and lots four (4) and ten (10,) in block one hundred and fifty-five (155,) aforesaid has entirely failed, so that this defendant never acquired any title thereto, as it is informed and believes.

And this defendant avers, upon information and belief, that the title to all the rest of the said lots in the fourth ward of the city of Milwaukee, was more or less defective. This defendant avers, upon information and belief, that on the 10th day of September, A. D. 1855, the several lots of land above described, and which were conveyed by this defendant to the said defendant, C. D. Nash, were not

worth more than the price paid therefor by the said Nash, as hereinafter stated.

501 This defendant, further answering, avers, upon information and belief, that the property aforesaid, lying in the fourth ward of the city of Milwaukee, was purchased the summer and fall of 1853 by the Milwaukee, Fond du Lac, and Green Bay Railroad Company, and was paid for principally in the stock of said company; that in the above estimate of the value of said property the value thereof is stated to have been about the same which was so as aforesaid paid for the same; and in making such estimate regard has been had to the state and condition of the title to said property, the tax titles thereon, and the encumbrances resting against the same.

That the said Byron Kilbourn, Moses Kneeland, and James Ludington were, all of them, directors of the said La Crosse and Milwaukee Railroad Company, while said company was interest, as aforesaid in said property.

This defendant, further answering, says that the said Ludington and Kneeland were not appointed by the board of directors of said company, nor by the executive committee thereof, to sell and dispose of the said lands hereinbefore and in said bill described; and this defendant denies that said Kneeland and Ludington, or either of them, made a contract of sale either in writing or by parol, which was subsequently ratified and executed by said company, agreeing to sell the said land to one Charles D. Nash; but this defendant avers that on or about the third day of September, A. D. 1855, the said Charles D. Nash submitted a proposition in writing to the president and directors of the said company to purchase all of said property, and offering for the same the sum of twenty-five thousand dollars—ten thousand dollars in the farm mortgage bonds (so called) of the company, and fifteen thousand dollars in the full paid stock of the company; that the said proposition was considered by the executive committee of the board of directors at a meeting held at the office of said company on the 7th day of September, A. D. 1855, at which meeting the following persons, members of said committee, were present, viz: Stoddard Judd, president; Byron Kilbourn, Moses Kneeland, Edwin H. Goodrich, and Edwin Townsend, directors; and upon consideration of the said proposition the same was accepted by the said committee by a resolution then and there adopted, of which the following is a copy, as appears by the record of proceedings of the executive committee aforesaid, viz:

"*Resolved*, That the proposition of C. D. Nash, submitted in writing under date of the 3d inst., for the purchase of property, real estate in the 4th and fifth wards, be accepted."

That on the 8th day of September, A. D. 1855, in pursuance of the contract so made, as aforesaid, between this defendant and said Nash, the said company executed and delivered to said Nash a quit-claim deed of all the aforesaid property in the fourth ward of said city of Milwaukee, and received from the said Nash in payment therefor the sum of ten thousand dollars in the farm mortgage

502 bonds (so called) of this company, and on the same day, to

wit, the said 8th day of September, this defendant entered into a contract with the said Nash, in writing, for the sale and conveyance of all of said property in the fifth ward of said city of Milwaukee, a copy of which is hereunto annexed and marked "Schedule J;" and on or about the 14th day of July, A. D. 1856, this defendant, in pursuance of said contract, executed and delivered to the said Nash a quitclaim deed for all the property last aforesaid.

This defendant has no knowledge, information, or belief as to where the said Nash obtained the farm mortgage bonds and stock which he paid to this defendant for said lots and land; and this defendant denies that it was directly or indirectly understood to the knowledge or belief of this defendant at the time of said sale to said Nash that he, said Nash, should thereafter, at any time or upon any terms, convey said lands to said Kilbourn, Kneeland, and Ludington, or either of them.

This defendant, further answering, says that this defendant is informed and believes that the said Nash, after the said conveyance to him, did convey all of the said lands to said Moses Kneeland; but this defendant has no knowledge, information, or belief as to when the said conveyance was made, what consideration the said Kneeland paid to the said Nash, or how it was paid, nor what the said Nash did with such consideration, nor how he disposed of the same, nor whether the same, in any way or form or under any device or color, returns to the said Kneeland, or to any other person for the said Kneeland's benefit.

And this defendant, further answering, admits it to be true that this defendant did, on or about the 30th day of September, A. D. 1857, make, seal, execute, and deliver to said defendant, D. C. Freeman, a certain instrument in writing, and which this defendant believes to be the same which is mentioned and alluded to in the said bill of complaint as a pretended lease, the terms whereof are partially set forth in the said complainant's said bill of complaint; that the said instrument contains articles of agreement between this defendant and said D. C. Freeman, and was on said day interchangeably executed in duplicate between them; but whether the same is in judgment of law a lease, this defendant is unadvised, and this defendant leaves it to this honorable court to construe and give to said contract its legal operation according to the true intention and mean- of the parties thereto.

That the said contract was entered into with the sole view and design of vesting the said D. C. Freeman with the right of possession, enjoyment, and use of all and singular the property, rights, privileges, franchises, and emoluments therein mentioned and expressed, as a trustee and in trust, upon the trusts, terms, and conditions therein expressed, and as a security for the payment of the indebtedness
503 then due and owing by this defendant to the several persons and on the several accounts therein more particularly mentioned and described, a true copy of which said instrument is hereto annexed and marked Schedule K. But this defendant denies that the said instrument was made or executed with any design or in-

tention to cheat or hinder, delay or defraud the said complainant or the creditors of the said company; and this defendant avers that it is advised, and insists to this honorable court, that this defendant had lawful and competent power and authority to make and enter into the said contract and agreement with said defendant, D. C. Freeman, and to do all things therein and thereby contemplated. And this defendant denies that it was made, or was or is in fraud of the complainant's rights as a creditor of this defendant or otherwise, or that the same is a cloud upon his right to sell upon execution any property of the said railroad company subject thereto. But this defendant submits and insists that, save as to the personal property, the complainant may levy and sell the property and interest of the said railroad company, subject to the rights of the said D. C. Freeman, as well and absolutely as though the said defendant, D. C. Freeman, was not in the possession thereof; and this defendant, further answering, avers that the said contract was not made or delivered by this defendant to said defendant, D. C. Freeman, with intent to delay, hinder, and defraud its creditors; but on the contrary thereof, this defendant insists and avers that the said contract was made and delivered by this defendant, and was accepted by the said D. C. Freeman, with the sole and only object, intention, and purpose of securing the payment of the debts and liabilities therein mentioned, which are due and owing to meritorious creditors of this defendant.

This defendant, further answering, avers that the true and only consideration for the making of the said contract, or upon which the same was made, are correctly expressed therein; that the said contract or agreement was made with the said D. C. Freeman, as a trustee, in trust for the benefit of the creditors of the company therein mentioned, and to secure the payment of the several debts therein enumerated, and upon no other consideration whatever, and upon no other motive and for no other purpose whatever.

That this defendant is liable to pay from time to time, as the same shall become due to the holders thereof, the coupons or interest warrants upon bonds of the Milwaukee and Watertown Railroad Company, by said company issued and used in the construction of the said road mentioned and described in the said agreement with the said D. C. Freeman, and which bonds amount to three hundred and ten thousand dollars, and to secure the payment of which principal and interest a mortgage was executed by the said Milwaukee and Watertown Railroad Company, bearing date August 1, 1853, covering that portion of said road extending from the junction to the city of Watertown;

504 and that the said bonds and the interest thereon constitute a valid and bona fide debt against this defendant, and is a lien upon that portion of its said road above described.

That this defendant is also legally liable and bound to pay to the holders thereof, from time to time, as the same shall become due, the coupons or interest warrants upon two hundred thousand dollars of the bonds of the city of Milwaukee issued to the Milwaukee and Watertown Railroad Company, and the payment whereof is secured by a mortgage or mortgages on that portion of the road of this defend-

ant, extending from the junction to Columbus, and that the same constitutes a just, valid, and meritorious debt against this defendant, which this defendant is legally and morally bound to pay, and which is a lien upon that portion of its road last above described.

That this defendant is legally liable to pay to the holders thereof, from time to time as the same shall become due, the interest warrants or coupons on one hundred and eighteen thousand dollars of bonds of the said Milwaukee and Watertown Railroad Company, the payment whereof, principal and interest, is secured by a mortgage upon that portion of this defendant's road extending from the junction aforesaid to the city of Watertown, and which constitutes a just, valid, and meritorious debt against this defendant, which this defendant is legally and morally bound to pay, and which constitutes a lien upon that portion of this defendant's road last above described. That by an act of the legislature of the State of Wisconsin, approved October 13th, A. D. 1856, entitled "An act to amend an act to incorporate the La Crosse and Milwaukee Railroad Company," approved April 2d, 1852, the La Crosse and Milwaukee Railroad Company was authorized to consolidate its capital stock with the capital stock of the Milwaukee and Watertown Railroad Company, upon such terms and conditions as had been or might be agreed upon between the board of directors of said companies, and it was therein declared and enacted that the name of the La Crosse and Milwaukee Railroad Company should continue and be and remain the corporate name of said consolidated company, that previous to the passage of said act the said La Crosse and Milwaukee Railroad Company had agreed with the said Milwaukee and Watertown Railroad Company upon a consolidation, and upon the terms thereof, which, on or about the 13th day of October, A. D. 1856, became and were fully consummated, and the said La Crosse and Milwaukee Railroad Company, by force of such agreement and the said act, became and was and is liable to pay and discharge the debts and obligations contracted by the said Milwaukee and Watertown Railroad Company before such consolidation, including the liabilities and obligations contracted by the said Milwaukee and Watertown Railroad Company hereinbefore set forth, and the payment whereof was provided for in and by the said agreement between this defendant and the said D. C. Freeman, a copy whereof is set forth in said Schedule "K," hereto annexed.

This defendant, further answering, says that on the 13th day of June,
A. D. 1857, this defendant entered into a contract or agree-
505 ment in writing with Avery Hill & A. V. Rudd, composing the
firm of Hill & Rudd, the same persons mentioned and described in the said contract between this defendant and said D. C. Freeman, wherein and whereby the said Hill & Rudd undertook and contracted to furnish the materials, and would finish and complete in a careful and skilful manner, the depot buildings then about to be erected for this defendant in the second ward of the city of Milwaukee, which buildings were to be of the character, materials, and dimensions, and erected and finished in the manner in the said agreement and specifications thereto annexed and particularly described,

a true copy of which said contract and agreement, except the specifications and schedules thereto annexed, is hereto appended and marked Schedule I, and to which this defendant craves leave to refer. That immediately after the execution of the said contract last mentioned, the said Hill & Rudd entered upon the performance of the same, and commenced the erection of the buildings therein mentioned, and continued engaged in the said work down to and after the 13th day of September last past; that the amount of work performed and materials furnished by the said Hill & Rudd under the said contract, up to the said 30th day of September last, was about eight thousand two hundred and ninety-five dollars, and the particulars whereof is shown by the estimate of the engineer hereto annexed, and marked Schedule M M; and the amount paid thereon was about sixteen hundred dollars, and the amount then due to the said Hill & Rudd on account of work done and materials furnished under said contract, was on the said 30th day of September, A. D. 1857, about the sum of six thousand six hundred and ninety-five dollars.

That on the 22d day of January, A. D. 1857, this defendant entered into a contract with one D. C. Jackson for the construction of what is commonly called the "Portage division" of its railroad, being that portion of its said road extending from Madison to the junction of the said Portage division with the eastern division of the La Crosse and Milwaukee railroad, upon the terms and conditions, and for the prices in the said contract particulary set forth, a copy of which said contract is hereto annexed, and marked Schedule N, and to which said contract, when produced and proved as this court shall direct, this defendant craves leave to refer. The said Jackson, immediately after the execution of the said contract, entered upon the construction of the said Portage division of the road of this company, and continued so engaged on the construction thereof throughout the last summer, and down to about the said 30th day of September, A. D. 1857, that the entire amount of work performed by the said D. C. Jackson, under the said contract, upon that portion of this defendant's said road embraced in the said contract, is shown in the estimate thereof made by E. W. Woodward, chief engineer of the said company, a copy whereof is hereto annexed, and marked Schedule O, and is about ninety-five thousand six hundred and eleven dollars and two
506 cents, and that the payment thereon made by this defendant, up to the said 30th day of September, A. D. 1857, was, as shown by the books of said company, which are believed to be correct, the sum of forty-six thousand seven hundred and eleven dollars and five cents; a copy of the account of the said company against the said Jackson is hereto annexed, and marked Schedule P; and that the balance due to the said Jackson on the said 30th day of September, A. D. 1857, for and on account of said work, under the said contract with him, was about the sum of forty-eight thousand eight hundred and ninety-nine dollars and ninety-seven cents, payable as in the said contract set forth; but this defendant further says that the account between it and the said Jackson has not been critically adjusted and liquidated, and that on a careful settlement and adjustment of said

account the said balance may be slightly varied; but it is believed and averred to be substantially correct, and the amount so shown to be due to the said Jackson, excepting any slight errors in the account, was actually and equitably and meritoriously due to the said D. C. Jackson, on the said 30th day of September, A. D. 1857, for work done under said contract.

This defendant, further answering, avers that there is no agreement or understanding, secret or otherwise, to the knowledge of the said defendant, other than the said contract set forth in Schedule K, hereto annexed, that any other persons than the said persons mentioned and provided for in said contract, should be interested in, or in any way share the profits and avails of the said contract with the said Freeman; and this defendant in fact says that no person other than those named and provided for in the said contract with the said Freeman is to share or even participate in any of the revenues or profits of the said road described in said contract according to the terms thereof.

Without that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge of the said defendant. All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its costs and charges, in this most wrongfully sustained.

The La Crosse and Milwaukee Railroad Co.—

By H. L. PALMER,
Vice President.
EDWIN H. GOODRICH.

[SEAL.] Attest: J. HADLEY, *Secretary.*
H. L. PALMER,
Solicitor for Defendants.
A. R. R. BUTLER,
Of Counsel for Defendants.

507 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

On this 14th day of December, A. D. 1857, before me personally appeared Edwin H. Goodrich, and being by me first duly sworn, made oath and said that he is a director of the La Crosse and Milwaukee Railroad Company, and has been such director since the first organization of said company; that he was vice president of said company from about the 16th day of April, A. D. 1857, until the 1st day of October, A. D. 1857, and that he has heard the foregoing answer by him subscribed read; and that he knows the contents thereof; and that the same is true of his own knowledge, except as to the matter therein stated on information and belief, and that as to those matter he believes it to be true.

J. P. C. COTTRILL,
U. S. Commissioner, District of Wisconsin.

Schedule J.

Articles of agreement made this eighth day of September, in the year eighteen hundred and fifty-five, between the La Crosse and Milwaukee Railroad Company, party of the first part, and C. D. Nash, party of the second part, witness as follows:

1st. Said party of the first part has this day sold to the said party of the second part all their estate, right, and interest, in lots nine (9,) ten (10,) and eleven (11,) in block three (3,) and lots one (1,) two (2,) and three (3,) in block forty-seven (47,) and all in the fifth ward of the city of Milwaukee, for the price of fifteen thousand dollars.

2d. The said party of the second part agrees to pay therefor, the said sum of fifteen thousand dollars, in full paid shares of the capital stock of the said party of the first part; that is to say, one hundred and fifty shares of said stock of one hundred dollars each, fully paid, to the said party of the first part, upon the determination of a suit in chancery, now pending in the circuit court of Milwaukee county, wherein George H. Walker is complainant and the said party of the first part is defendant.

3d. The said party of the second part agrees to take charge of the said suit in chancery, and to conduct the same with all due diligence to a determination, at his own risk and expense.

4th. Upon the determination of the said suit, if there shall be a decree therein for the defendant, the said party of the first part shall, upon payment of the said sum of fifteen thousand dollars as aforesaid, execute and deliver to the said party of the second part a quitclaim deed of conveyance of all their right, title, and interest in the said lots of land, subject to all outstanding titles, equities, liens, and encumbrances, whether arising by grant, tax, tax sale, or otherwise.

5th. Upon the determination of the said suit, if there shall
508 be a decree therein reinvesting the title to the said lots in the said complainant therein, or decreeing a reconveyance thereof, by the said defendant therein, the said party of the first part shall, upon payment of the said sum of fifteen thousand dollars as aforesaid, assign over to the said party of the second part whatever money or securities the said complainant may be decreed to pay or deliver to the said defendant as a condition to such decree.

6th. In case of any compromise or adjustment of the subject-matter of the said suit, between the said complainant therein, and the said party of the second part, the said sum of fifteen thousand dollars shall become immediately payable in manner aforesaid.

In witness whereof the said parties have signed and sealed these presents the day and year first above written.

(Signed) STODDARD JUDD,
President of the L. C. and M. R. R. Co.
CHARLES D. NASH.

Sealed and delivered in the presence of—
P. M. JOHNSON.
S. C. JOHNSON.

[Copy.]

Schedule K.

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and D. C. Freeman, of the city of Milwaukee, and State of Wisconsin, party of the second part, on this thirtieth day of September, in the year one thousand eight hundred and fifty-seven, witnesseth:

The said party of the first part, in consideration of the undertakings and agreements of the said party of the second part hereinafter contained, hereby sells and conveys to the said party of the second part all its personal property of every name, kind, and description in the State of Wisconsin, used in and appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto as soon as the same can conveniently be done.

And the said party of the first part, in consideration of the undertakings and agreements of the said party of the second part, hereinafter contained, does hereby demise, lease, and let unto the said party of the second part, from and after the date of these presents, for the full term of one year thence next ensuing as hereinafter provided, its entire railroad and railroad route from the city of Milwaukee, by the way of Watertown and Columbus, to Midland, in the county
509 of Columbia, and commonly called and known as the Watertown division of the La Crosse and Milwaukee railroad, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appurtenant thereto, together with all estate, rights, privileges, franchises and appurtenances connected therewith or belonging or incident thereto, subject only to such prior or superior liens as may or do exist thereon, and all existing contracts or agreements with any other company whose railroad connects with the said Watertown division of the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part shall, from and after the date of these presents, and until the expiration or other determination of this lease, as herein provided, operate so much of the said railroad hereby leased as is ready for operation, and from time to time such other portions of the said road as may be made ready for operation, in such manner as will produce the largest amount of net receipts.

That the said party of the second part shall, during the time aforesaid, keep the said road hereby leased, and all the rolling stock upon the same, in good and thorough order (W) (repair) (R); and that the said party of the second part shall receive and appropriate, in the manner hereinafter provided, all the receipts or income to be derived from the operation of said railroad.

And it is further mutually agreed that the said party of the second

part may, if it shall be found for the interest of the said company, and with the consent of the said company, purchase additional rolling stock, and appropriate the receipts of the said railroad to the payment to be made therefor.

The said party of the second part undertakes and agrees that he will defray all the current cost and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the cost and expenses of operating the said railroad, and that he will, by the fifteenth day of each and every month, make out and deliver to said party of the first part a correct statement exhibiting the total amount of receipts and income of the said railroad from all sources during the next preceding month; also the cost and expenses during such month of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and the cost and expenses of operating the said railroad, and also exhibiting the net receipts from said railroad, after deducting such cost and expenses of rolling stock and repairs, and of operating the said road; and that he will, at any time, on demand of the said company or its president or secretary, furnish to the person demanding the same a statement in detail of the items of which such statement is composed; and any officer or agent of the said company, authorized by said company to do so, shall at any time have the right to examine the accounts of said party of the second part, relating to the repair of said railroad and rolling stock,
510 and to the operating of the said railroad, and to the earnings and expenses thereof generally.

And the said party of the second part further undertakes and agree that the said net receipts, after deducting the cost and expenses of repairs and operating the said railroad, as exhibited by the said monthly statement as aforesaid, shall be appropriated by him in the manner following, to wit:

First. To the payment of all coupons hereafter to become due upon three hundred and ten thousand dollars of the bonds of the said company, secured by a first mortgage or deed of trust of said railroad from the junction to the city of Watertown, bearing date August 1, 1853.

Second. To the payment of all coupons hereafter to become due on two hundred thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee and Watertown Railroad Company, secured by a second mortgage or mortgages on the road from the junction to Columbus.

Third. To the payment of all coupons hereafter to become due on one hundred and eighteen thousand dollars of bonds of the said company, secured by a third mortgage or deed of trust of said railroad from the junction to the city of Watertown, bearing date the 1st day of February, A. D. 1856.

Fourth. Whatever balance of said net receipts, as aforesaid, shall remain after the payment of said coupons shall be applied by the party of the second part, in payment of the amount due or to become due, to Messrs. Hill & Rudd, on their contract with the La Crosse and Milwaukee Railroad Company, dated the 30th day of June, A. D.,

1857, for the erection of depot buildings for said company in the city of Milwaukee.

Fifth. And whatever balance of said net receipts, as aforesaid, shall remain after making all the payments aforesaid, shall be applied by the said party of the second part to the payment of whatever sum shall be due, or to become due, to D. C. Jackson, on his contract with the La Crosse and Milwaukee Railroad Company, dated the 22d day of January, A. D. 1857, for the construction of the Portage division of the La Crosse and Milwaukee railroad, extending from Madison to Portage City, or to the point where said line shall intersect the eastern division of the said railroad.

And the said party of the second part further undertakes and agrees that whenever he shall have paid from the net earnings of the said railroad such sum as shall be due to the said Hill & Rudd, and the said D. C. Jackson, on their said contracts, or whenever at any time, either before or after the expiration of one year from the date hereof, the said party of the first part shall pay to said Hill & Rudd, and to the said D. C. Jackson, any balance which at such time they shall respectively be entitled to receive upon their said contracts, then he will surrender up to the said party of the first part the quiet and
511 peaceable possession of the whole and every part of the said railroad, together with its right of way and depot grounds, and all and singular the property, rights, privileges, and franchises, fixtures and appurtenances whatsoever hereby leased, or which by virtue of this lease may or shall come to the possession of the said party of the second part in good repair, including all the rolling stock and other personal property put upon the said road by the said party of the second part by virtue of this contract, and that he will reconvey and deliver to the said party of the first part all personal property hereby conveyed which shall not have been worn out, destroyed, or consumed in the operation of the said road; and that he will convey and deliver to the said party of the first part all the personal property which shall have been acquired by the said railroad in pursuance of this contract or with the means derived from the receipts from said railroad; and that he will at such time deliver on the line of said railroad to said party of the first part an equal quantity of wood to that now on hand for said railroad, and transferred therewith to said party of the second part by virtue of this contract. And that the said party of the second part will use and apply all the personal property hereby conveyed to him in and about the keeping in repair and operating of the said railroad, and the rolling stock, machinery, fixtures, and appurtenances belonging to or connected with the same.

And whenever the said party of the second part shall have paid out of the net earnings of the said road the amount due to the said Hill & Rudd and the said D. C. Jackson in the said contract, or the same shall otherwise be paid by the said company, this lease shall cease and determine, and from thenceforth shall be null and void.

It is further stipulated and agreed that the said party of the second part shall not sell nor assign this lease nor underlet the property,

hereby leased, nor any part thereof, to any other person or corporation without the consent of the said party of the first part be first obtained and indorsed on or annexed hereto in writing.

In witness whereof the said party of the first part has caused these presents to be subscribed by its president and secretary, and its corporate seal to be thereto affixed, and the same have been subscribed by the said party of the second part the day and year first above written.

La Crosse and Milwaukee Railroad Company—

[L. S.] By BYRON KILBOURN,
President.
JACKSON HADLEY,
Sec'ry of the R. R. Co.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Be it remembered, that on this first day of October, A. D. 1857, before me personally appeared Byron Kilbourn, who is per-
512 sonally known to me, who being by me duly sworn, says that he resides in the city of Milwaukee; that he is president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the foregoing instrument is the common and corporate seal of said company, and was affixed thereto by their authority; and that he, as president, and Jackson Hadley, as secretary, subscribed their names thereto by like authority; and on the same day, before me, also appeared D. C. Freeman, to me personally known to be the person who executed the foregoing instrument, and acknowledged the execution thereof for the uses and purposes therein mentioned.

Inventory and schedule of property leased and sold to D. C. Freeman by the La Crosse and Milwaukee Railroad Company, on the Watertown division of said company, as mentioned in the lease to said Freeman, dated September 30th, 1857.

Columbus station:

1 station building, 30 by 70 feet.
1 engine-house, 30 by 50 feet.
1 water-house, 20 by 20 feet; tank and pump.

Lowell station:

1 station-house, 18 by 40 feet.
1 water-house, 20 by 20 feet; tank and pump.

Watertown station:

1 station-house, (brick building,) with frame addition, 28 by 180 feet.
1 frame shed opposite station-house, joining railroad track.
1 machine shop, 40 by 100 feet.
1 car shop, 40 by 100 feet.
1 blacksmith shop, 25 by 50 feet.
2 water-houses, 18 by 30 feet, and tank.
1 old engine-house, 50 by 50 feet.
1 frame wood shed, 20 by 160 feet.

Oconomowoc station:

1 station-house, 26 by 100 feet.
1 water-house, 14 by 20 feet; tank and pump.
1 wood shed, 25 by 100 feet.

Pine Lake station:

1 station-house, 16 by 40 feet.

Hartland station:

1 old station-house, 14 by 20 feet.

513 Pewaukee station:

1 station-house, 20 by 20 feet.
1 wood shed, 15 by 75 feet.

Junction station:

1 station-house, 26 by 35 feet (undivided half.)

Milwaukee station:

1 engine-house.

Furniture in depot at Columbus:

1 desk.
1 stove and fixtures.
1 clock.
1 pair trucks.
1 set scales.

Furniture in station at Lowell:

1 desk.
1 stove and fixtures.
1 set scales.
1 pair trucks.

Furniture in station at Watertown:

2 desks.
1 safe.
2 set trucks.
2 stoves and fixtures.
1 set scales.
1 telegraph instrument.
1 clock.

Furniture in station at Oconomowoc:

1 desk.
1 safe (small.)
1 telegraph instrument.
2 pair trucks.
1 set scales.
1 clock.
1 wheelbarrow.
1 stove and fixtures.

Furniture in station at Pine Lake:

1 desk.
1 stove and fixtures.
1 set scales.
1 pair trucks.

514 Furniture in station at Hartland:

1 desk.
1 stove and fixtures.
1 set scales.
1 pair trucks.

Furniture in station at Pewaukee:

1 desk.
1 stove and fixtures.
1 pair trucks.
1 set scales.

Rolling stock:

67 box cars.
35 rack cars.
10 hand cars.
4 passenger cars.
2 baggage cars.

Locomotive engines:

1 engine, R. W. Fowler (20 tons.)
1 " Columbus (25 ")
1 " Hercules (25 ")
1 " Nebraska (25 ")
1 " Oconomowoc (20 ")
1 " Watertown (20 ")
1 " No. 22 (22 ")
20 dump cars.

Property in machine shop at Watertown:

1 stationary engine, boiler and fixtures.
1 large engine, chatche and tools, 16 feet bed.
1 " " " 14 "
1 " " " 9½ "
1 iron plainer.
1 bolt cutter.
1 upwright drill.
8 heavy wrought vices.
20 feet 2 inches shafting, with hangers and pulleys.
100 assorted files.
1 portable forge.
2 pair platform scales.
1 Halloy patent pump.
1 blower.

1 wheel press.
6 car axles,
6 French wheels 28 inch.)
4 tender truck wheels.
515 10 truck wheels (33 inch.)
1 lot patterns for engines.
2 barrels oil.

Property in blacksmith shop:

3 forges, fixtures, and tools.
2 heavy wrought vices.
4 tons Blossburgh coal.
1 ton old scrap iron.
½ ton old engine tin.
300 lbs. bar iron.
200 lbs. bar steel.

And wood on line of road, between Junction and Lowell station, 3,650 cords.

Schedule L.

Articles of agreement made and entered into this thirteenth day of June, A. D. 1857, by and between the La Crosse and Milwaukee Railroad Company, party of the first part, and Avery Hill and A. V. Rudd, composing the firm of Hill & Rudd, parties of the second part, witnesseth:

That the said parties of the second part, for and in consideration of the payments hereinafter mentioned to be made to them, and of the covenants and agreements hereinafter contained on the part of the party of the first part, for themselves, their heirs, executors, and administrators, do covenant and agree to and with the said party of the first part, that they will, at their own cost and expense, furnish and provide all the materials, and build, finish, and complete in a careful, skilful, and workmanlike manner, to the full and complete satisfaction and acceptance of the engineer of the said La Crosse and Milwaukee Railroad Company, the depot building to be erected for the said party of the first part on block forty-one in the second ward of the city of Milwaukee, consisting of twenty apartments on the first floor, and to build and complete the same and the several parts thereof at the times hereinafter specified, except as hereinafter provided. The said work and materials all to be according to the plan and specifications therefor prepared by the chief engineer of said company, a copy of which specifications are hereto annexed, and such plan and specifications and the drawings of the said engineer for said work are hereby made a part and parcel of this contract.

And it is mutually agreed, that the said party of the second part shall commence and build, under the direction of the engineer of said company and according to the said plan and specifications, during the present year, one hundred feet in front of the said building, embracing five apartments, including the main entrance and stairway,

516 and to have the same fully completed by the first day of November next, and to build and fully complete a further portion of said building, being so much thereof as will embrace the remaining five apartments of the ten centre apartments of the said building, by the first day of October, one thousand eight hundred and fifty-eight; and to build and fully complete the remaining portion of said building, embracing eleven apartments, on or before the first day of December, A. D. 1858, except the building of the eight bank vaults mentioned in the said plans and specifications which are not embraced in this contract; and the said party of the first part, in consideration of the premises and that the said parties of the second part shall fully and faithfully execute the aforesaid work, so as to fully carry out the design for the same as set forth by the specifications or shown by the plans according to the true intent and meaning thereof, and to the full and complete satisfaction of the chief engineer of the said company at the several times herein mentioned, do hereby agree to pay to the said parties of the second part therefor the sum of seventy-nine thousand one hundred and fifty dollars. It is further mutually agreed that monthly estimates shall be made by the chief engineer of the said company, as the work progresses, as near as practicable, of the proportional value of the work done and materials furnished, and such estimates shall be paid as follows: eighty-five per cent. thereof shall be paid in cash, and fifteen per cent. of each estimate may be reserved by the company until the work is fully completed and accepted. Provided, that when the work required by this contract to be completed by the 1st day of November next shall be fully completed and accepted, a final estimate shall be made of the work and materials required for and used in the erection thereof, and the same shall then be fully paid, including the fifteen per cent. which shall have been retained from prior estimates up to that time.

It is further mutually agreed that the said company reserves the right to contract for the painting and glazing of the said building and the materials for that portion of the work with Thomas Collingbourne, at such price and to be paid for by said company in such manner as may be agreed upon by and between the said company and the said Collingbourne. Provided the said Collingbourne will do such painting at such reasonable prices as other first-class painters will do it for; and, in case the said company shall contract with the said Collingbourne for such painting, then the amount for which the said Collingbourne shall contract to do the same shall be paid him by the company, and shall be credited to the company as a payment to that amount on this contract.

It is further mutually agreed by and between the parties aforesaid that there shall be no charge for extra work, except in alterations of the plan, and in that case the extent and price of such alterations and extra work shall be agreed upon at the time the same are
517 made, and entered or indorsed on this contract in writing, otherwise not binding on either of the parties.

In witness whereof the said party of the first part has caused these presents to be signed by Byron Kilbourn, esq., president of said

company, and the said parties of the second part have hereunto set their hands the day and year first above written.

(Signed) BYRON KILBOURN,
President.
AVERY HILL.
A. V. RUDD.

Schedule M M.

CHIEF ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
Milwaukee, August 1st, 1857.

Estimate of labor performed and materials furnished in the construction of the depot buildings in Milwaukee, by Hill & Rudd, contractors, up to date:

Excavating and removing 400 cubic yards earth, 30c	$120 00
Stone masonry in foundation wall, 7,430 cub. ft., 20c	1,486 00
Stone masonry in sewers, 570 cubic feet, 20c	114 00
854 b. m., 3-inch white oak planks, $20	17 08
9,670 b. m., 3-inch red oak planks, $15	145 05
250 superficial feet stone flagging, 12c	30 00
20,000 common brick in wall, $11	220 00
Carpenter work	50 00
Total estimate	2,182 13
Less 15 per cent	327 32
	1,854 81

Certified by—

E. W. WOODWARD.

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
Milwaukee, October 1st, 1857.

Estimate of labor performed and materials furnished in the construction of the depot building in Milwaukee, by Hill and Rudd, contractors, up to date:

Excavating and removing 400 cubic yards	$120 00
Stone work	1,900 00
Brick work, 30,000, at $11	3,300 00
Lumber	1,700 00
518 Carpenter's work	$500 00

Iron work and hardware	775 00
Total estimate	8,295 00
Deduct previous estimate	2,182 13
Present estimate	6,112 87
Less 15 per cent	916 93
	5,195 94

Certified.

E. W. WOODWARD.

Schedule N.

This agreement, made and entered into this twenty-second day of January, A. D. 1857, by and between the La Crosse and Milwaukee Railroad Company, of the first part, and D. C. Jackson, of Horicon, party of the second part, witnesseth:

That the said party of the second part, for and in consideration of the several covenants, stipulations, and payments on the part of the said party of the first part hereinafter mentioned and set forth to be made and performed by the said party of the first part, hereby agrees and contracts to construct, for the said part of the first part, a single track sub-grade railroad except when ballast can be found on the section known as the "Portage division" of the La Crosse and Milwaukee railroad, extending from Madison to Portage City, or to the point where said line shall intersect the eastern division of said road, and also that portion of the Watertown division of the La Croose and Milwaukee railroad, extending from Columbus to Portage City, or to its junction with the eastern or Portage division of the said La Crosse and Milwaukee railroad, all the side tracks to be paid for in addition to the main line, and at the same price per mile.

The work included in this contract is the grading, bridging, culverts, ties, grubbing, clearing, and laying of the track, which shall be laid by centre stakes and without grades. The work to be done in a substantial and workmanlike manner, for the sum of eight thousand dollars per mile of main line, and the same sum per mile for side track.

Grading.—The road bed shall be graded fourteen feet wide in embankments, at sub-grade, and eighteen feet wide in excavations; the excavations and embankments are to have such slopes as the engineer may direct, but not to exceed one foot and half horizontal to one foot vertical, and no waste shall be deposited within three feet of the top of the slope of excavations, nor any borrowing ditches to be dug within five feet of the base of the embankments. The said railroad company are to furnish grounds convenient to waste
519 earth when from excavations, and to borrow earth from for embankments for the road bed.

Masonry.—All abutments for bridging and culverts shall be con-

structed of timber, unless suitable stone can be obtained within two miles of the point where the structures are to be put in; should stone be found within the above limits, the bridge, abutments, and piers (if any) shall be of rough masonry, with good beds and joints; no lacking shall be used of less thickness than five inches, unless required for levelling up; common lime mortar shall be used in all bridge masonry; culverts shall be constructed of rough stone and without mortar.

Cross-ties.—The cross-ties are to be hewed or sawed, and to be of red, white, burr, and black oak, cedar, spruce, tamarack, gray or Norway pine, or black walnut, and are to be six inches thick, eight feet long, and are all to have a bearing surface of not less than seven inches. Ties shall be laid in track two feet and three inches from centre to centre, and twenty-three hundred and forty-four ties shall be laid in each mile of track.

Track-laying.—The tracks shall be laid in the usual way of laying sub-grade tracks, and a T-rail and common wrought-iron chair, the spike to be five inches long and have an inch square. The said party of the first part agrees to furnish the said party of the second part with locomotive power and a suitable number of platform or suitable cars for the transportation of chairs, spikes, ties, timber, and other materials on the said roads embraced in this contract, required during the execution of this contract, free of all cost or charge to the said second party; and the said party of the first part also agrees that in case the said second party shall procure ties for such road along the line of the Watertown division of the said La Crosse and Milwaukee railroad between Columbus and Watertown, the said party of the first part will furnish motive power and cars for the transportation thereof, from the points where such ties may be delivered on the line of said road to the place where the same are to be used; and the said party of the first part also agrees that the contractor shall be passed free over the road during the construction, and any of his agents necessary for his business shall be furnished with a pass from the president or superintendent, and laborers with their families and baggage once out to the work on passes furnished by the contractor or his agent on any freight or construction train.

Extra work.—It is hereby mutually agreed and stipulated between the parties to this agreement, that all common earthworks exceeding twelve thousand cubic yards per mile, hauling of excavation or embankment over one thousand feet, all excavation of hard pan, cement, gravel, indurated clay and indurated clay mixed with rock, rock and quicksand, culverts and bridges exceeding five hundred dollars per mile, and masonry, shall be considered extra work, and shall be paid for at the following prices, to wit: hauling excavation or embankment over one thousand feet, one cent per cubic yard for each
520 extra one hundred feet; hard pan, cement, gravel, indurated clay and indurated clay mixed with rock, extra thirty cents per cubic yard; solid rock excavation one dollar per cubic yard extra; loose rock excavation seventy-five cents per cubic yard extra; quicksand excavation twenty-seven cents per cubic yard extra; all excess of common earth excavation or embankments over the maximum of twelve

thousand yards per mile thirty cents per cubic yard extra; excess of culverts and bridges over five hundred dollars per mile, at estimate of engineer, extra; dry masonry three dollars and seventy-five cents per cubic yard extra; mortar masonry five dollars and fifty cents per cubic yard extra; arch masonry in mortar seven dollars per cubic yard extra; provided that if the aggregate of earthworks shall fall short of the maximum of twelve thousand cubic yards per mile, then twenty-five cents per yard is to be deducted from the above-mentioned price for solid and loose rock.

It is agreed that the quantities of excavation and embankment on the lines of road embraced in this contract shall be as much below the maximum of twelve thousand cubic yards per mile as practicable, consistent with a proper regard for the location of the work, and due care shall be taken in the location of the lines to produce the most favorable result in this respect. It is also agreed that all excavations from the cuts shall be hauled into embankments when it can be done within a reasonable haul, and shall be computed as excavation or embankment only.

The party of the first part agrees to furnish the iron rail of the T pattern, and all chairs and spikes required for laying the track of said roads at Columbus, Portage City, or at the junction of the Watertown and eastern divisions of its said roads, as said party of the first part shall elect, free of charge for transportation. The party of the second part agrees to cut and prepare the iron for laying in track.

It is also agreed by and between the parties that the party of the first part is to do all the engineering, and to have the work at all times ready for the said party of the second part, so as not to hinder or delay the work, and to have the work divided off into sections of one mile each, being such a regular surveyed mile on the line; the said first party also agrees to furnish all right of way, and obtain ground for wasting materials on from excavations, and borrowing from for embankments, so as not to delay or hinder the progress of the work. And it is further mutually agreed between the parties to this contract that if in the course of the prosecution of this contract, or after the completion of the work to be done, any matter of difference or disagreement shall at any time arise, either as to the construction of this agreement or as to the manner of doing the work herein contracted to be done, all such matters of difference shall be at once submitted to three (3) disinterested persons to act in the premises, and should the parties not be able to agree on the third
521 person the two first selected shall select a third. The three so chosen shall hear the parties and decide the matters submitted to them, and the decision of a majority of them shall be final and conclusive; and their decision as aforesaid shall be irrevocable. It is further agreed that any extra work required to be done for which no price is specified shall be paid for at a fair price.

The work shall be commenced by the first day of March next, and shall be completed from Madison to Portage City, or to the point of intersection with the eastern division and Columbus to Portage City,

or to the junction of the Watertown and eastern divisions of the La Crosse and Milwaukee railroad, by the last day of October, A. D. 1858.

Estimates and payments.—Estimates shall be made on the first day of each month, by the engineer in charge of the said work, of the amount of work done and materials furnished by said party of the second part during the preceding month, and of the proportion which said work and materials bear to the whole work and materials embraced in this contract, and also separate estimates of the amount of work done and materials furnished by each sub-contractor, and copies of all such estimates shall be furnished to the said party of the second part; and the said party of the first part covenants and agrees to pay to the said party of the second part, on the fifth day of each month, ninety per cent. of the amount of such estimate so to be made on the first day of each month, as follows: that is to say, one-third of such payment shall be made in cash, and two-thirds thereof in farm bonds and mortgages, so called, bonds of the city of Madison, bonds of the city of Portage, or first mortgage bonds of said company, issued on account of said roads between Madison and Columbus and Portage City, or either or all of them, at the election of the company, at eighty per cent. of their par value. Such bonds are not to be convertible.

It is also mutually agreed and understood by and between the parties hereto, that at any time during the progress of the said work the said party of the first part shall have the right to suspend the performance thereof during such time as the said first party shall deem expedient, and again require the same to be resumed by the said party of second part, without being held liable for damages for any such suspension: provided, that at least thirty days' notice shall be given to said party of the second part of any such suspensions being required, and that a reasonable extension of time shall be given to the said party of the second part for the completion of the contract for any detention caused by such suspension. And the said party of the second part further covenants and agrees, that during the existence of this contract he will not sell, or offer for sale, or dispose of any of the bonds or securities which he may receive for work done or materials furnished under this contract, for a less price than at the rate of seventy cents on the dollar, without the consent of the
522 said party of the first part in writing first had and obtained; and in case the said party of the second part shall violate this contract, the board of directors or executive committee of the said party of the first part may declare this contract forfeited by the said party of the second part, and from thence the same shall cease and determine; and on the forfeiture of this contract as aforesaid the said party of the second part shall forfeit to the company all money that may remain due and unpaid at the time, and all right and claim whatsoever against the company for compensation, or damages for the non-fulfillment hereof.

In witness whereof these presents have been signed by the said party of the second part, and on behalf of the party of the first part have been signed by the president, by order of the board of directors.

(Signed) D. C. JACKSON.

Schedule O.

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE RAILROAD,
Milwaukee, October 5, 1857.

Estimate of total work done by D. C. Jackson on the Portage division of the La Crosse and Milwaukee railroad, made up to the present date, and at full pro rata allowance with the contract price for the work when finished.

Grading and masonry	$89,612 72
Loose rock, 1,157 yards, at 50 cents	578 50
Indurated earth, 18,066 yards, at 30 cents	5,419 80
	95,611 02

I hereby certify that the above estimate is correct.
(Signed) E. W. WOODWARD,
Chief Engineer.

Schedule P.

D. C. Jackson in account with La Crosse and Milwaukee Railroad Co., Portage Division, DR.

June 9.	To farm mortgage bonds	$3,600 00
June 9.	To western division	1,753 05
July 7.	To sundries	8,958 00
Aug. 13.	To farm mortgage bonds	2,800 00
Aug. 17.	To eastern division	12,000 00
Aug. 21.	To farm mortgage bonds	6,400 00
Sept. 8.	To farm mortgage bonds	3,200 00
Sept. 23.	To farm mortgage bonds	8,000 00
		46,711 05

523 *Schedule R.*

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE RAILROAD.
Milwaukee, July 3, 1857.

S. Chamberlain, esq.:

SIR: It is the request of the company that you ballast the road, as you proceed with the construction of the western division, between Portage City and La Crosse. The division engineers along the line will set stakes for this purpose, and give such explanations as may be required.

Yours truly,

E. W. WOODWARD.

And which said answer of Byron Kilbourn is as follows:

Answer of Byron Kilbourn.

The district court of the United States for the district of Wisconsin, in equity.

The separate answer of Byron Kilbourn, one of the defendants to the bill of complaint of Newcomb Cleveland, complainant, against this defendant, impleaded with the La Crosse and Milwaukee Railroad Company, Moses Kneeland, James Ludington, Selah Chamberlain, Charles D. Nash, and D. C. Freeman:

This defendant, now and at all times saving and reserving to himself all benefit and advantage of exception to the many errors and insufficiencies in the complainant's said blll of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material or necessary for him to answer unto, he makes and says that this defendant has heard read the answer of the La Crosse and Milwaukee Railroad Company to the bill of complaint in this cause, and knows the contents thereof; and this defendant hereby adopts the said answer of the said La Crosse and Milwaukee Railroad Company filed herein, and prays that the same may be taken as this defendant's answer to the interrogatories in the said bill of complaint contained, and numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 17, and 18, and that the same may have the same effect as and for the answer of this defendant to said interrogations as if the same was here again repeated at length.

This defendant, further answering, says, in answer to the interrogations in said bill contained, and numbered 14, that this defendant has no knowledge, information, or belief, whether any consideration was paid to said Nash, nor whether it was all paid by the said Kneeland, nor whether said Ludington paid any part thereof, or contributed in any manner thereto, and he leaves the said complainant to his proof in that regard; and this defendant denies that he,
524 this defendant, paid any part of the consideration, if any paid, to the said Nash, or contributed in any manner thereto. This defendant further says, in answer to the interrogatory in said bill of complaint contained, and numbered 15, that he has been informed and believes that said Moses Kneeland did convey to said James Ludington one-third part of the property aforesaid; but this defendant is not informed in relation to the consideration paid by the said Ludington to the said Kneeland therefor, or the time or manner of such payment, nor in relation to what the said Kneeland did therewith, or how he disposed of the same; or whether the same in any way, or under some cover or device, returned to the said Ludington, or to some other person for his benefit, except what he has derived from reading the statements of the said Kneeland and Ludington in relation thereto, contained in the answer of the said Kneeland and Ludington respectively in this case, and which statements this defendant has no reason to doubt, and believes it to be true.

This defendant, in answer to the interrogations in the said complainant's bill of complaint contained, and numbered 16, says that this defendant does not own, nor claim to own, or to be interested in the said lands, or any part thereof; and he does not claim to have or hold any part or any interest of or in the said lands; and this defendant says he is informed and believes that the said Ludington and Kneeland claim to own, each of them, one-third of the said lands; that this defendant has not, for two or three years past, had any occasion to inquire into the value of lots in that portion of the city in which said lands are situated; that he has been for much of the time out of the city, and the business in which he has been engaged has been of such a character that he has had little opportunity to become acquainted with the value of said lands, and that he does not feel himself competent to form a correct or reliable opinion of the value of the said lands in the aggregate, or of the respective interests of the said Kneeland and Ludington therein; that this defendant has read the statement of the said Kneeland and Ludington in relation to the value of said lands contained in their respective answers in this case, which statement he believes to be true. Without that, any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avested, traversed or denied, is new to the knowledge of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays to be herein dismissed, with his reasonable costs and charges in that behalf most wrongfully sustained.

BYRON KILBOURN.
H. L. PALMER,
Solicitor of Defendant, of Counsel.
BUTTLER, BUTTRICK & COTTRILL,
Of Counsel.

525 DISTRICT OF WISCONSIN, *ss:*

On this fourteenth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, before me personally appeared the above-named Byron Kilbourn, and made oath that he has read the foregoing answer by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

J. P. C. COTTRILL,
U. S. Commissioner, Wisconsin.

Docket entries.

DECEMBER 18, 1857.

This day the motion and rule of this complainant for an injunction came on to be heard, and was argued by counsel; and the hearing thereof not being concluded, the same was adjourned until to-morrow morning.

DECEMBER 19, 1857.

This day came the parties, by their counsel, and the motion and rule of this complainant for an injunction came on to be heard, and was argued by counsel, and the court held the same under advisement.

JANUARY 4, 1858.

This day came the parties, by their counsel, and on due considera- of the motion and rule for an injunction, and of the arguments of counsel, it is thereupon ordered by the court that an injunction be, and hereby is, allowed, according to the prayer of the bill, against Moses Kneeland and James Ludington, two of these defendants. And it is further ordered that the complainant have leave to file a plea to the declaration on file in the record of judgment in this court wherein Selah Chamberlain is plaintiff and the said railroad company is defendant, for the purposes of trying the consideration of said judgment. And also, on motion of this complainant, an issue will be made up for trying the consideration of an assignment on the nature of a lease mentioned in the pleadings, so far as the same is not embraced in said judgment.

FEBRUARY 3, 1858.

Ordered by the court that the order heretofore made, granting leave to the complainant to file a plea to the declaration in the judgment of Selah Chamberlain against the La Crosse and Milwaukee Railroad Company, and also respecting our issue to try the consideration of an assignment to said Chamberlain be, and hereby is, received, the same having been entered by mistake. But that all proceedings on said judgment be stayed until the further order of the court.

526 MARCH 6, 1858.

This day came the complainant, by his solicitors, and filed his replication to the answer of the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, James Ludington, Moses Kneeland, D. C. Freeman, and Selah Chamberlain, as follows:

Replication to answers.

United States district court, Wisconsin, in equity.

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, James Ludington, *et al.*

The replication of Newcomb Cleveland, complainant, to the separate answers of the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, James Ludington, Moses Kneeland, D. C. Freeman, and Selah Chamberlain, defendants:

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the

said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

M. H. CARPENTER & CO.,
WM. P. LYNDE,
Complainant's Solicitors.

And same day filed their discontinuance as to C. D. Nash, as follows:

Discontinuance as to C. D. Nash.

United States district court, Wisconsin, in equity.

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

The clerk will enter a discontinuance of the said suit as to the defendant C. D. Nash.

Yours, &c.,

FINCHES, LYNDE & MILLER,
Plaintiff's Solicitors.

527 *Order to take testimony of B. Kilbourn.*

APRIL 29, 1858.

This day came the complainant, by his counsel, and on his motion and affidavit that the defendant, Byron Kilbourn, is a material witness on the part of said complainant, and is not interested in the matter to prove which his testimony is material, it is thereupon ordered by the court that the deposition of said Byron Kilbourn be taken to be used and read in evidence in the trial of this cause, subject to all just exceptions.

Which affidavit, referred to above, is as follows:

Affidavit for testimony of B. Kilbourn.

United States district court, Wisconsin,

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, James Ludington, Moses Kneeland, D. C. Freeman, Charles Nash, and Selah Chamberlain. } In equity.

DISTRICT OF WISCONSIN, *ss:*

Newcomb Cleveland, the complainant above named, being duly

sworn, says, that Byron Kilbourn, one of the defendants above named, is a material witness on the part of said complainant; and is not interested in the matter to prove which the testimony of said Kilbourn is sought to be taken.

And further deponent saith not.

N. CLEVELAND.

Subscribed and sworn to before me, this 23d day of April, A. D. 1858.

GEO. A. WEEKS,
Notary Public, Milwaukee Co., Wis.

APRIL 30, 1858.

This day came the parties, by their counsel, and on their motion and agreement in writing filed, it is ordered by the court that the time for taking testimony and proofs in this cause be, and hereby is, extended to both parties to the first Monday of July next.

Order to take testimony of Moses Kneeland.

NOVEMBER 1, 1858.

This day Selah Chamberlain, one of the defendants in this cause, filed his affidavit that Moses Kneeland, a co-defendant, is a
528 material witness for said Chamberlain, and has no interest in the issues in said cause between said Chamberlain and the complainant. And on motion of N. J. Emmons, solicitor and of counsel for said Chamberlain, it is ordered by the judge that said Selah Chamberlain have leave to examine said Moses Kneeland as a witness on his behalf, upon the issues between him and the complainant, before Winfield Smith, master, to whom the above cause has been referred. Notice to be given to the solicitors for the complainant.

Hearing.

NOVEMBER 29, 1858.

This day came the parties, by their counsel, and this cause came on to be heard upon the pleading, proofs, and exhibits. The said hearing not being concluded, it was adjourned until to-morrow morning.

NOVEMBER 30, 1858.

This day came the parties, by their counsel, and the hearing of this cause was resumed, and not being concluded, it is ordered by the court that the further hearing be adjourned until to-morrow morning.

DECEMBER 1, 1858.

This day came the parties, by their counsel, and the hearing of this cause was resumed, and not being concluded, it is ordered by the court that the further hearing be adjourned until to-morrow morning.

DECEMBER 2, 1858.

This day came the parties, by their counsel, and the hearing of this cause was resumed, and not being concluded, the same was adjourned until to-morrow morning.

DECEMBER 3, 1858.

This day came the parties, by their counsel, and the hearing of this cause was resumed and concluded. And the court not being sufficiently advised of, and concerning the same, took time to consider.

JANUARY 15, 1859.

This day, by consent, this cause was further argued by Mr. Palmer for the defendants, Moses Kneeland and James Ludington, and by Mr. Lynde for the complainant.

And on the hearing of this cause the following testimony was admitted as evidence on the part of the complainant:

529 COMPLAINANT'S TESTIMONY.

[*Deposition of E. P. Whaling.*

District court of the United States for district of Wisconsin, in equity.

NEWCOMB CLEVELAND
v.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Selah Chamberlain, and others.

Depositions taken on behalf of the complainant, before Winfield Smith, one of the masters and commissioners of this court, by consent of parties.

FRIDAY, 29*th October*, 1858.

On this day appeared Mr. Brown, of counsel for the complainant, and Mr. Emmons, of counsel for the defendant Selah Chamberlain, and Edward P. Whaling, a witness heretofore sworn and examined in this cause for the complainant.

Edward P. Whaling recalled:

I am now secretary of the La Crosse and Milwaukee Railroad Company. I have in my possession a statement of the monthly receipts and expenditures of the company. They are in R. D. Jennings's handwriting. Those which are signed are signed by Edwin H. Goodrich, manager.

Question. Have you the statements, and will you produce them?

(Objected to by Mr. Emmons as irrelevant and immaterial.)

Answer. The originals are in my office. I have the copies here of all but one, which is mislaid.

The said copies are produced by the witness and offered in evidence by Mr. Brown. They are hereto annexed and marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

(The evidence is objected to as irrelevant and immaterial.)

The statement is mislaid. I will find it if possible and produce a copy. The amount of the receipts and expenditures for February, 1858, according to the statement, was:

Receipts	$20,035 38
Expenditures	9,864 20

Mr. R. D. Jennings is general freight agent in Mr. Chamberlain's employ. I think the papers are in his handwriting.

(Signed) EDWARD P. WHALING.

530 Statement showing the receipts and expenditures of the La Crosse and Milwaukee railroad for the month of October, A. D. 1857, as operated by S. Chamberlain, lessee:

Total receipts for freight business	$37,467 55	
Deduct am't for adv. charges	13,416 72	
Gross freight earnings		$24,050 83
Total receipts for passenger business	21,413 45	
Total receipts for express business	887 90	
		22,301 35
Total gross earnings		46,352 18
Deduct am't of pay rolls	14,107 60	
Deduct am't of monthly bills	1,674 29	
		15,781 80
Net earnings charged to S. Chamberlain		30,570 29

Distribution of pay rolls and monthly bills:

Operating expenses		$14,629 88
Construction expenses		
Superstruction	$187 50	
Machinery	85 09	
Passenger and freight stations	447 40	
Loco. repairs and services of train men engaged in work west of Portage	432 00	
		1,152 01
		15,781 89

(Signed) EDWIN H. GOODRICH,
Manager.

Milwaukee, November 12th, 1857.

Statement showing the receipts and expenditures of the La Crosse and Milwaukee railroad for the month of November, 1857, as operated by S. Chamberlain, lessee:

Total receipts for freight	$30,041 25	
Deduct am't back charges	5,704 01	
Gross freight earnings		$24,337 24
Total receipts for passengers	13,522 61	
Total receipts for express	616 70	
		14,139 31
Total gross earnings		38,476 55
531 Deduct am't of pay rolls	11,303 92	
Deduct am't of monthly accounts	2,474 38	
		13,778 30
Net earnings charged to S. Chamberlain		24,698 25
Distribution of pay rolls:		
Operating	$10,399 72	
Construction	904 20	
		$11,303 92
Distribution of monthly accounts:		
Operating	2,002 90	
Construction	471 48	
		2,474 38
		13,778 30

Above items under head of construction are chargeable to the following accounts:

Construction account	$332 46
Passenger and freight stations	370 95
Superstruction	60 35
Repairs of rolling stock. For repairs of engines and cars in service of contractors	600 03
Machinery	11 89
	1,375 68

(Signed) EDWIN H. GOODRICH,
Manager.

OFFICE LA CROSSE & M. R. R. Co.

This above is a copy of the original report made to this office.
EDWARD P. WHALING, *Secretary.*

Statement of receipts and expenditures of the La Croose and Milwaukee railroad for the month of December, 1857, as operated by S. Chamberlain, lessee.

Total receipts for freight	$15,024 88	
Deduct amount of adv. charges	4,294 61	
		$10,730 27
Total receipts for passengers	17,497 77	
Total receipts for express service	487 25	
532 Total receipts for bridge tolls	125 65	
Balance of telegraph account	35 98	
		18,146 65
		28,876 72
Deduct amount of pay rolls	10,277 05	
Deduct amount of monthly accounts	3,446 56	
		13,723 61
Net earnings chargeable to S. Chamberlain, lessee		15,153 31

OFFICE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

The above is a copy of the original report made to this office.

EDWARD P. WHALING, *Secretary.*

Distribution of pay rolls:

Operating	$8,856 00	
Construction	1,421 05	
Total amount of pay rolls		$10,277 05
Distribution of monthly accounts:		
Operating	2,869 75	
Construction	576 81	
Total amount of monthly accounts		3,446 56
Total expenditures		13,723 61

Above items under head of construction are for expenditures on account of completing engine-house, constructing station building, water-tanks, engine-houses, turntable at terminal stations, and are chargeable to the following accounts:

Passenger and freight stations	$454 56
Superstructures	321 13
Repairs of rolling stock. For repairs of engines and cars in service of contractors	754 30
Construction account: For wages of men employed, fuel and oil, and waste used on contractor's trains	467 87
	1,997 86

(Signed) EDWIN H. GOODRICH, *Manager.*

Milwaukee, January 11, 1858.

533 Statement showing the receipts and expenditures of the La Crosse and Milwaukee railroad for the month of January, 1858, as operated by S. Chamberlain, lessee.

Total receipts for freight	$15,022 13	
Deduct amount adv. charges	2,263 89	
Gross freight earnings		$12,758 24
Total receipts for passengers	10,702 07	
Total receipts for express service	526 75	
Total receipts for bridge tolls	95 60	
Total receipts for telegraph account	7 01	
Total receipts for mail service	146 50	
		11,477 93
		24,236 17
Deduct amount of pay rolls	9,414 89	
Deduct amount of monthly accounts	2,315 36	
		11,730 25
Net earnings chargeable to S. Chamberlain, lessee		12,505 92

Recapitulation:

Gross earnings		$24,236 18
Operating expenses	$10,523 71	
Construction expenses	1,206 54	
		11,730 25
Profits		12,505 92

OFFICE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

The above is a copy of the original report made to this office.

EDWARD P. WHALING,
Secretary.

Distribution of pay rolls:

Operating expenses	$8,588 94	
Construction expenses	825 95	
Total amount of pay rolls		$9,414 8

Distribution of monthly accounts:

Operating expenses	1,934 77	
Construction expenses	380 59	
Total amount of monthly accounts		2,315 36
Total expenditures		11,730 25

534 Above items under head of construction are for expenditures on account of passenger and freight stations $241 15
Superstructures 227 64
Repairs of rolling stock. For repairs of engines and cars in contractor's trains 321 55
Construction account. For wages of men employed, fuel and oil, and waste used for contractor's trains 416 20

Total construction expenses 1,206 54

(Signed) EDWIN H. GOODRICH.

Milwaukee, February 6, 1858.

Statement showing receipts and expenditures of the La Crosse and Milwaukee railroad for the month of March, 1858, as operated by S. Chamberlain, lessee.

Total receipts for freight	$15,537 33	
Deduct amount adv. charges	2,496 85	
		$13,040 48
Total receipts for passengers	12,679 38	
Total receipts for express service	498 24	
Total receipts for bridge tolls	41 22	
Total receipts for telegraph line	5 24	
		13,224 08
		26,264 56
Expenses :		
Pay rolls	9,679 25	
Monthly accounts	3,662 43	
		13,341 68
Net		12,722 88

(Signed) EDWIN H. GOODRICH,
Manager.

Distribution of pay rolls and monthly accounts :

Operating expenses	$11,610 70
Construction expenses	1,730 98
	13,341 68

The item for construction is subdivided as follows :

Passenger and freight station	$661 67
Superstructure	289 47
Machinery	50 75

535 Repairs of rolling stock:

For repairs engines and cars on contractor's trains	$192 44
Oil and waste used on contractor's trains	115 29
Fuel	227 36
Construction account:	
For wages of men employed in contractor's trains	194 00
	1,730 90

OFFICE LA CROSSE AND MILWAUKEE R. R. CO.

The above is a copy of the original report made to this office.

EDWARD P. WHALING, *Secretary.*

Statement showing the receipts and expenditures of the La Crosse and Milwaukee railroad for the month of April, 1858, as operated by S. Chamberlain, lessee.

Total receipts for freight	$21,151 20	
Deduct amount adv. charges	3,598 95	
Freight earnings		$17,852 25
Total receipts for passengers	13,785 21	
Total receipts for express service	783 03	
Total receipts for mail service	1,240 20	
Total receipts for bridge tolls	20 42	
Total receipts for telegraph line	9 38	
		15,838 24
Total earnings		33,690 49
Expenses:		
Pay rolls	11,479 37	
Monthly accounts	3,059 10	
		14,538 47
Net earnings		19,152 02
Distribution of pay rolls and monthly accounts:		
Operating expenses	$12,253 35	
Construction expenses	2,285 12	
		$14,538 47

536 The items for construction is subdivided as follows:

Passenger and freight stations	$423 11
Superstructure	202 58
Machinery	60 22
Oil and waste	122 29
Fuel	233 88

Repairs of rolling stock:	
For repairs of engines and cars in contractor's trains	$981 04
Construction account:	
For wages of men employed on contractor's trains	262 00
	2,285 12

(Signed) EDWIN H. GOODRICH, *Manager.*

OFFICE LA CROSSE AND MILWAUKEE RAILROAD CO.

The above is a copy of the original report made to this office.

EDWARD P. WHALING, *Secretary.*

Statement showing the receipts and expenditures of the La Crosse and Milwaukee railroad for the month of May, 1858, as operated by Selah Chamberlain, lessee.

Total receipts for freight	$29,688 49	
Deduct amount adv. charge	5,884 73	
Freight earnings		$23,803 76
Total receipts for passengers	17,942 93	
Total receipts for express	538 89	
Total receipts for bridge tolls	79 56	
Total receipts for telegraph line	14 29	
		18,575 67
Total earnings		42,379 43
Expenses:		
Pay roll	12,754 29	
Monthly accounts	3,757 15	
		16,511 44
Net earnings		25,867 99

(Signed) EDWIN H. GOODRICH, *Manager.*

Milwaukee, June 12, 1858.

537 Distribution of pay rolls and monthly accounts:

Operating expenses	$13,636 32
Construction	2,875 12
	16,511 44

The item for construction is subdivided as follows:

Passenger and freight stations	$416 57
Superstructure	196 55
Machinery	224 36
Oil and waste	180 53
Fuel	279 99
Repairs for rolling stock:	
For repairs of engines and cars on contractor's trains	1,008 52
Construction account:	
For wages of men employed on contractor's trains	568 60
	2,875 12

OFFICE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

The above is a copy of the original report made to this office.

EDWARD P. WHALING, *Secretary.*

Statement showing the receipts and expenditures of the La Crosse and Milwaukee railroad for the month of June, 1858, as operated by S. Chamberlain, lessee.

Total receipts for freights	$32,138 53	
Deduct amount adv. charges	3,984 74	
		$28,153 79
Total receipts for passengers	15,043 54	
" " express	511 10	
" " bridge tolls	54 55	
" " telegraph line	7 56	
" " rent	105 00	
		15,721 75
Total earnings		43,875 54
Expenses:		
Pay rolls	14,314 75	
Monthly accounts	6,171 06	
		20,485 81
Net earnings		23,389 73

July 9, 1858.

(Signed) EDWIN H. GOODRICH,
Manager.

Distribution of pay rolls and monthly accounts:

Operating expenses	$20,193 27
Construction expenses	292 54
	20,485 81

The item for construction is subdivided as follows:

Passenger and freight stations	$16 50
Superstructure	97 00
Machine shops	1 75
Repairs of rolling stock	27 42
Construction account:	
For wages of men employed on contractor's trains, and oil and waste	149 87
	292 54

OFFICE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

The above is a copy of the original report made to this office.

EDWARD P. WHALING,
Secretary.

Statement showing the receipts and expenditures of the La Crosse and Milwaukee railroad for month ending July 31, 1858, as operated by S. Chamberlain, lessee.

Total receipts for freight	$32,102 29	
Deduct amount adv. charges	3,834 89	
		$28,267 40
Total receipts for passengers		17,316 34
" " express		509 28
" " bridge tolls		65 29
" " telegraph line		8 94
" " mail service		1,451 76
		47,609 01
539 Expenses:		
Pay rolls	15,705 91	
Monthly accounts	6,731 67	
		22,437 58
Net earnings		25,171 43

Distribution of pay rolls and monthly accounts:

Operating expenses	$22,237 16
Construction	200 42
	22,437 58

The item for construction is subdivided as follows:

Superstructure	$80 62

Construction account:

For wages of men employed on contractor's trains	$119 80
	200 42

OFFICE LA CROSSE AND MILWAUKEE R. R. CO.

The above is a copy of the original report made to this office.

EDWARD P. WHALING,
Secretary.

Statement showing the receipts and expenditures of the La Crosse and Milwaukee railroad for month ending August 31, 1858, as operated by S. Chamberlain, lessee:

Total receipts for freight	$22,643 16	
Deduct amount adv. charges	2,614 11	
		$20,029 05
Total receipts for passengers		16,885 08
Total receipts for express service		690 37
Total receipts for mail service		
Total receipts for bridge tolls		59 11
Total receipts for telegraph lines		18 51
		37,682 12
Expenses:		
Pay rolls	16,455 94	
Monthly accounts	7,595 77	
		24,051 71
		13,630 41

540 Distribution of pay rolls and monthly accounts:

Operating expenses	$23,507 90
Construction expenses	543 81
	24,051 71

The item for construction is subdivided as follows:

Superstructure	$184 41

Construction account:

For wages of men employed on contractor's trains	359 40
	543 81

OFFICE LA CROSSE AND MILWAUKEE R. R. CO.

The above is a copy of the original report made to this office.

EDWARD P. WHALING,
Secretary.

Statement showing the receipts and expenditures of the La Crosse and Milwaukee railroad for month ending September 30, 1858, as operated by S. Chamberlain, mortgagee in possession:

Total receipts for freight	$43,829 23	
Deduct amount adv. charges	6,581 20	
		$37,248 03
Total receipts for passengers		23,714 34
Total receipts for express service		833 05
Total receipts for bridge tolls		50 95
Total receipts for telegraph		10 54
Total receipts for mail service		1,444 64
		63,301 55
Expenses:		
Pay rolls	17,453 52	
Monthly accounts	8,727 72	
		26,181 24
Net earnings		37,120 31
Distribution of pay-rolls and monthly accounts:		
Operating expenses		$25,758 35
Construction expenses		422 89
		26,181 24

541 The item for construction is subdivided as follows:

Superstructure	$37 74
Construction account. For wages of men employed on contractor's train	385 15
	422 89

OFFICE LA CROSSE AND MILWAUKEE R. R. CO.

The above is a copy of the original report made to this office.

EDWARD P. WHALING,
Secretary.

Copy of resolution.

Resolved, That the president and secretary execute and deliver to Selah Chamberlain a warrant of attorney, and such other papers as may be necessary to perfect a judgment in his favor against the La Crosse and Milwaukee Railroad Company, for $629,089 72, being the amount due him at this date as contractor.

I certify that the above is a true copy of a resolution passed by the board of directors of the La Crosse and Milwaukee Railroad Company, on the 1st day of October, A. D. 1857.

EDWARD P. WHALING,
Secretary.

And the following were admitted as evidence and the part of the defendant, Chamberlain, at the hearing of this cause:

Chattel mortgage of La Crosse and Milwaukee Railroad Company to Greene C. Bronson and others.

This indenture, made and and entered into the fourth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, parties of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, all of the city and State of New York, parties of the second part.

Whereas the said parties of the first part did, on the thirty-first day of December, in the year one thousand eight hundred and fifty-six, duly execute and deliver to the said parties of the second part, as trustees, a deed of trust, bearing date on that day, wherein and whereby the said parties of the first part, for the purpose of securing the payment of certain moneys which the said party of the first part had determined to borrow, stipulated and provided for the issue of the bonds of the said La Crosse and Milwaukee Railroad Company for ten millions of dollars, of the date, tenor, and description
542 in the said deed of trust particularly set forth, and payable, principal and interest, as therein provided. And whereas the said railroad company, in and by the said deed of trust, granted, bargained, sold, conveyed, and confirmed unto the said parties of the second part all and singular the several tracts of land which then was or thereafter might be or constitute the site of the roadway turnouts, engine-houses, workshops, depots, and other buildings of the said company, and other land, buildings, and estate and property, real and personal and mixed, therein specially and particularly described, which conveyance was in and by the said deed of trust declared to be and was made to the said parties of the second part, and the survivors and survivor, successors and successor, of them and theirs and his heirs and assigns, in trust, and upon the trusts, terms, and conditions therein particularly expressed.

And whereas the said parties of the first part did in and by the said deed of trust covenant and agree to and with the said trustees, the said parties of the second part, that the said railroad company would from time to time during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to the said trustees, or to their successors in the said trust, all such further conveyances and assurances, and would do all such further acts as might be either necessary or proper for more effectually vesting in said trustees all such right, title, interest, or estate, both legal and equitable, as said railroad company then had or might thereafter acquire of, in, and to all and every part of the property thereby conveyed or intended to be conveyed.

And whereas the said railroad company had at the time of the execution of the said deed of trust, or have since acquired certain property which was conveyed or intended to be conveyed thereby,

and of which a further conveyance is deemed proper for more effectually vesting in the said trustees all the title, right, interest, and estate, legal or equitable, which the said company then had or have since acquired therein.

Now, therefore, know all men by these presents, that the said parties of the first part, in pursuance of the covenants and stipulations in the said deed of trust contained, and in consideration of the premises, and of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto the said parties of the second part, all and singular about eleven thousand tons of iron rails, being all the iron rails purchased for and belonging to the said company, and lying at Millwaukee and elsewhere along the line of the road of the said company, or wherever the same or any portion thereof may be, and not actually laid down in the track thereof, and all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description be-
543 longing to the said company, wherever the same may be. To have and to hold all and singular the property hereby conveyed or intended to be conveyed to the said parties of the second part, and the survivors or survivor of them, their successors or successor, and their and his heirs and assigns, upon the like trust, terms, and conditions as are in the said deed of trust contained, and all the powers and authority granted to the said parties of the the second part, in and by the said deed of trust in relation to the property conveyed thereby, and in relation to the sale, conveyance, and disposal thereof, and in relation to the disposition and application of the proceeds of such property in case of sale, and hereby conferred upon, granted to, and vested in the said parties of the second part, in relation to the property hereby conveyed, as fully and effectually as if the property hereby conveyed had constituted a part of the roadway of the said company, described in the said deed of trust at the date thereof, and the said parties of the second part are hereby charged with all the duties in relation to the property hereby conveyed, and the sale and disposition of thereof, and of the proceeds thereof in case of sale thereof, with which they are charged, in relation to the property conveyed or intended to be conveyed by the said deed of trust, and and the said parties of the second part may and they are hereby authorized and required to treat the property hereby conveyed in the same manner, and to hold the same upon the same terms, trusts, and conditions and for the same purposes as the property mentioned in the said deed of trust and not otherwise, and may take possession thereof and sell and dispose of the same in the same manner, at the same time, and upon the same conditions as they may take possession of and sell and dispose of the property in said deed of trust mentioned, and as a part thereof and not otherwise; and it is hereby declared to be the object and intention of these presents and of the parties hereto, to subject the property hereby conveyed or intended to be conveyed, and every part thereof, to the operation of the said deed of trust, and

each and every stipulation and covenant therein contained, as fully and effectually, to all intents and purposes, as if the said property hereby conveyed or intended to be conveyed had, at the time of the execution of the said deed of trust, constituted a part of the property thereby conveyed, and had then been embraced in and conveyed thereby.

In witness whereof said railroad company has hereunto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, the day and year first above written.

[SEAL.] BYRON KILBOURN,
President.

J. HADLEY,
Secretary of the Railroad Company.

In presence of—
H. A. PEABODY.
E. P. WHALING.

544 STATE OF WISCONSIN, *Milwaukee County:*

On the fourth day of September, one thousand eight hundred and fifty-seven, before me came Byron Kilbourn, president of the La Crosse and Milwaukee Railroad Company, with whom I am personally acquainted, and who, being by me duly sworn, says that he resides in the city of Milwaukee in said county, and that he is president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the foregoing indenture is the common and corporate seal of the said railroad company, and was affixed to the said indenture by order of the board of directors of said company, for the uses and purposes therein expressed, and that he by like order did subscribe his name thereto as president of said company, and that Jackson Hadley, as secretary of said company, subscribed his name thereto by like order and authority.

(Signed) H. L. PALMER,
Notary Public, Milwaukee County.

Indorsed as follows: Copy. The La Cross and Milwaukee Railroad Company to Green C. Bronson, James T. Soutter, and Shepherd Knapp. Received for filing, September 4, 1857. I hereby certify that the within is a true copy of a chattel mortgage, filed in the office of the city clerk, Milwaukee, on the 4th day of September, 1857, and is now on file in said office. R. B. Lynch, city clerk. Milwaukee, December 1, 1858.

Filed Dec. 2, 1858.

Contract between La Crosse and Milwaukee Railroad Company and Vose, Livingston & Co.

NEW YORK, *3d December*, 1856.

Memorandum of agreement between the La Crosse and Milwaukee Railroad Company and Vose, Livingston & Co., of New York:

1. Vose, Livingston and Co. agree to sell, and the La Crosse and Milwaukee Railroad Company agree to buy, eleven thousand (11,000)

tons good merchantable quality railroad iron of the Erie pattern, weighing about fifty-eight pounds (58 lbs.) per lineal yard, at fifty-five dollars ($55) per ton of 2,240 pounds, with 2½ per cent. commission. Shipments to be made from Great Britain from January to July, 1857, and the iron delivered in bond at ship's side in New York.

545 2d. Payment to be made, on receipt of bills of lading by the sellers in the first mortgage bonds of the La Crosse and Milwaukee Railroad Company, at the rate of eighty cents on the dollar, which bonds are on the balance of the road, about 325 miles, and further secured by a mortgage on the lands, about one million acres, recently granted to the company. It is understood and agreed that the sellers shall be entitled to any reduction or advantage, if any, to the subscribers or purchasers of the balance of the issue of $2,500,000 bonds to be made in 1857. Advances of bonds to be made to the sellers, should they require them from time to time before the receipt of bills of lading—say, not to exceed at any one time (unless hereafter agreed) one hundred thousand dollars, ($100,000,) which they may call for at any time after the bonds are issued—say, not earlier than the month of February, 1857. The interest that may have accrued on the bonds to the date of bills of lading to be allowed by the sellers.

3. It is further understood and agreed that the above-mentioned bonds have the privilege attached of subscribing to (fifty) fifty per cent. (say five shares) of stock in the La Crosse and Milwaukee Railroad Company for each bond of one thousand dollars received. The holders of said stock to be called upon for only five per cent. when subscribing, and no further assessments to be called upon the stock before the road is all completed and all the lands exhausted in liquidation of the bonds.

4. The whole amount of bonds to be issued not to exceed ten million dollars, ($10,000,000,) and the amount to be issued in 1857 not to exceed two and a half million.

5. The rails to be used in the construction of the La Crosse and Milwaukee railroad between Portage City and La Crosse, and for no other purpose.

6. The sellers are not to be held responsible for delay or non-delivery of iron caused by war or foreign enemies.

(Signed) VOSE, LIVINGSTON & CO.

La Crosse and Milwaukee R. R. Co.—

(Signed) By BYRON KILBOURN, *President*.

Stipulation as to testimony.

And afterwards, to wit, on the 20th day of July, 1860, came the parties, by their solicitors, and filed the following stipulation:

District court of the United States for the district of Wisconsin.

NEWCOMB CLEVELAND
v.
SELAH CHAMBERLAIN, impleaded with THE La Crosse and Milwaukee Railroad Company and others.

The following is a copy of testimony of different witnesses
516 taken in the cause, which copy was made for one of the counsel in the cause, and used at the hearing by the court and counsel, and admitted to be correct.

It is, therefore, hereby stipulated that the clerk may annex such copy of testimony to the record as a part of his return on Chamberlain's appeal herein.

Dated July 20th, 1860.

EMMONS & VAN DYKE,
Solicitors for Defendant Chamberlain.
WM. P. LYNDE,
Solicitor for Complainant.

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District court of the United States for the district of Wisconsin, in equity.

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Selah Chamberlain, Byron Kilbourn, Moses Kneeland, James Ludington, and others.

Deposition taken on the part of the complainant before Winfield Smith, one of the masters and commissioners of this court, pursuant to a stipulation filed in this cause.

M. M. H. CARPENTER,
Of Counsel for Complainant.
M. BUTLER,
Of Counsel for the Defendants Ludington, Kneeland, and the La Crosse and Milwaukee Railroad Company, and
MR. EMMONS,
Of Counsel for the Defendant Chamberlain.

Wednesday, 12th May, 1858.

Proceedings adjourned to Thursday, 27th May, 1858, at 10 a. m.

Byron Kilbourn, being duly sworn for the complainant, testifies and says:

(Mr. Emmons objects to the competency of the witness, on account of his being a party to the suit.)

I recollect something of the circumstances of the sale of the property at the mouth of the Menominee. The first that I learned of the

sale being contemplated, was that I neard that Nash and Cook desired to purchase it. I had always been in favor of selling the property, because the location of the depot would always be unsettled while the company owned this property.

I therefore approved of the proposed sale. I first heard of Kneeland's and Ludington's interest in the purchase about the time of the contract. They too proposed to me to take an interest in it. In addition to the property purchased of the company, was some other property, I believe.

I was president of the company at the time of making the contract for building the road from Portage to La Crosse. My impres-
548 sion is that the contract was made by the board. I know that certain subsequent contracts have been made modifying that contract. This was while I was president of the board.

Question. At the time these modifications were made, did you know of them or approve of them?

(Objected to.)

Answer. One of the modifications was made when I was not here. This was in regard to the construction of the tunnel. The date of this contract was April 30, 1857. I think it was indorsed on the back of the other contract. The second modification extended his contract, and was made with my co-operation.

Question. By whom was this modification of the contract made in regard to the tunnel?

(Objected to as irrelevant, and a matter with which the plaintiff has no concern.)

Answer. I only know from the signatures to the paper. It is executed by Mr. Goodrich, vice president, on the part of the company, and by Mr. Chamberlain, for himself.

Question. Was that indorsement made on its date or subsequently?

(Objected to for the same reason as before.)

Answer. I have no knowledge.

(Mr. Emmons objects to all inquiries and testimony on this subject.)

I saw this indorsement about the time I made my answer in this case, but I first heard of the existence of the agreement at or before my return home. I made myself a survey of the summit and tunnel in April. I returned to La Crosse with the chief engineer, and wrote to Mr. Goodrich to make an arrangement with Mr. Chamberlain to do the work. I transmitted the letter, with sundry verbal communications, by Mr. Woodward, the chief engineer. He returned to Milwaukee, and I went on to St. Paul. Subsequently, and within three or four weeks, he joined me at Prescott, on the Mississippi river. That was about May 20. I think I learned from him that the company had arranged with him for the construction of the tunnel work. I speak of the modification of the contract in regard to the work.

Question. Did Mr. Goodrich, in price, terms, &c., follow out your directions?

(Objected to for the same reason.)

Answer. I don't think my letter could be properly construed into directions. Those were for the board to make. My letter inclosed an estimate made by me and Mr. Woodward.

Question. How did the estimate correspond with the contract price?

(Objected to.)

Answer. I can't say. I recollect generally that the contract
549 price was higher than the estimate. I can't say how much higher. The stone work was some higher, and the earth work a good deal higher. I don't remember the original estimate.

My impression is that the aggregate cost by the estimate was $70,000 or $80,000. The increase of cost under the contract is owing, I suppose, as much to the increase of quantities as to the increase of prices.

Question. Had there been, up to the time of the Chamberlain judgment, any ratification by the board of the contract made by Goodrich?

(Objected to.)

Answer. I am not aware of any action of the board subsequent to the action of the executive committee in making the contract. That is, the action of the board unless repudiated by them under our laws. I suppose they could not repudiate an executed contract.

The executive committee consisted of myself, president, and Mr. Goodrich, vice president, ex-officio, and Moses Kneeland, Samuel Brown, and Garrett Whit, directors. I was present and acting in the board when the judgment was confessed in favor of Chamberlain, and when the lease was given to him. The lease was given previous to the judgment. The lease was given during the pendency of the suit with Cleveland. I think Mr. Chamberlain first proposed that the lease should be given to him, as the embarrassments of the company grew more apparent. Mr. Chamberlain, of course, grew anxious about his pay. When I went home in the early part September, 1857, he expressed much uneasiness as to his security. He urgently requested of me to make him some specific security. This was about the first of September. He explained to me, at considerable length, the danger that he might not receive his pay for the work he was then doing. That he was expending a good deal of money, had a great many men at work, and had drawn largely on his means, and the means of his friends. The company was largely in arrears to him on the contract. He had heard of dissatisfaction on the part of Vose, Ludington & Co., of whom he had purchased the iron, on account of not making payments to them, and that they threatened to reclaim the iron. He wanted some assurance and security that he would receive his pay at some time, or else he would have to suspend his operations. He stated to me that he had urged this very strongly on the directors. He urged it very strenuously on me. He seemed to think he was incurring too large responsibilities on uncertainties. I told him on my part, on behalf of the company, that I thought we had financial arrangements then made by the issue of a million of second mortgage bonds, by which we could pay off his estimates, and that such security would, therefore, not be necessary

at that time. In consideration of those views I advised against it. I told him that although I was willing to do everything to accommodate him, I was afraid that would injure our credit and hinder us in raising funds. The result was that we did not go into it at
550 that time. We gave him at time, however, the assurance that if we should be disappointed in raising funds, we would give him all the security we could. That the great point with us was the completion of the road, and that we would protect him at all times as far as we could. In this he acquiesced, though urgent to the last that we should do as he desired. As we did not see fit to do so then, his parting remark to me was, that he should depend on us to see him safe against all harm. I told him that from the prospect we then had, I thought we should be able to pay him $150,000 in the ensuing month, (September.) I left here on the fourth of September for New York. When I reached there, after an absence of about three weeks, I found that our prospects for raising funds from this source were very much diminished. I think we did not, in fact, pay him that month more than $15,000.

I found, as September and October progressed, that we were getting deeper into embarrassment, and that an association of bondholders was forming around us who were thwarting all our efforts, and I saw but one way to save the road, and secure its ultimate completion; which was to make this lease to Mr. Chamberlain. When I became fully convinced of this, I returned home for this purpose. I had a great amount of anxious reflection, and came fully to this conclusion. I laid views before the board, who had come to the same conclusions before, and we went on and made the lease at the time, and in the manner that the records show.

Question. What dangers did you propose to guard against by giving the lease?

Answer. I have already explained that fears were entertained of combinations of bondholders being formed sufficiently strong to counteract our efforts in raising money to meet our liabilities and progress with the work. And that danger of this had become so imminent, and was growing so apparent, that the only remaining hope for the continuance of work on the road seemed to be to give Mr. Chamberlain such a lien upon it as would assure the payment of what had already become due for work then done, as well as for that to be done under this contract. This was the great and paramount danger which threatened to overwhelm the company; but there were other and nearer dangers threatening us more immediately, against which it was equally necessary to guard. There had been one or two instances of attachment sued out against the company for indebtedness, to the amount of a few hundred dollars; and it seemed quite evident that by such means the company's resources would soon be so exhausted as to render it entirely powerless for further progress. The floating debts of the company amounted to perhaps some $300,000, in small sums, varying from a few dollars to some hundreds, and in some cases to a few thousands; if sued under attachments, under the influences of panic, as no doubt they would have been, would have

effectually arrested the progress of the work, and prevented
551 the completion of the road. These were the dangers against which the board felt it to be its duty to guard by every lawful means in its power.

Question. When you represented the dangers to the directors on your return, what dangers did you state? and how did you propose, through the lease, to guard against them?

Answer. This question is substantially answered by the foregoing answer. The board of directors fully comprehend the embarrassments of the times, and the dangers which threatened a suspension of work on the road, without being communicated by me; and some of the directors had been anxious, as a safeguard to the company, to make the necessary liens at a much earlier period, and doubtless would have authorized it to be done in the latter part of August or first of September, except for reasons assigned by me against it at the time.

Question. At the time of giving the lease, was the amount of indebtedness to Chamberlain known?

Answer. No.

Question. At the time was it agreed that a judgment should thereafter be confessed?

Answer. I do not think there was any distinct agreement that a judgment would be confessed by the company for the amount due Chamberlain at the time of making out the lease; but it was the intent of the company to give him a perfect lien upon the road and its earnings to secure all indebtedness, past and accruing, under his contract, until the whole should be paid; and such was one of the conditions of the lease, without reference to the specific amount.

Question. Why did you not wait, before giving the lease, until you had ascertained the indebtedness?

Answer. Because the amount of indebtedness at that or any other particular time was not a necessary element in the lease.

Question. When did you first agree to give a judgment to Chamberlain; and why did you conclude to give it?

Answer. There was no agreement properly, so speaking, to give Mr. Chamberlain a judgment, except the order made for that purpose by the board. This was on the day and at the time when the papers for that purpose were made out, which date I do not remember; but it can be ascertained by reference to those papers. The reason why this order was made, I understood to be in consequence of a doubt entertained by the counsel of Mr. Chamberlain, whether some legal difficulties might not be raised as to his lease lien covering the iron not laid down on the road; and to avoid all questions in this respect, and in fact to render the transaction as regarded a lien as perfect as possible, and thereby accomplish the ends proposed to be secured by it, it was deemed advisable by the board, under advice of counsel, to give the force of a judgment in support of the previous lien, for the amount then reported to be due.

552 Question. Had you then ascertained the indebtedness, and how? Have you you not stated that it was not then ascertained?

Answer. At the time of giving the judgment the amount due Mr. Chamberlain had been ascertained by a report from the chief engineer Mr. E. W. Woodward, whose statement was considered conclusive by the company. I have never stated that the amount then due was not then ascertained. This question is propounded, as I understand, in consequence of a statement made by Mr. Cleveland, complainant in this pending suit, before the late committee of investigation of the legislature, and to his counsel. In this statement Mr. Cleveland has fallen into several mistakes, the most essential of which is in relation to the matter of this question, and is as follows, p. 123.

"Chamberlain, he (Kilbourn) said, took the lease and was gone into the country some two days, then returned and told him (Kilbourn) that he, Kilbourn, had made the lease to him to prevent Cleveland from getting possession of the road; that he had consulted with his counsel, and that they had advised him that the lease would not prevent Cleveland or any other judgment creditor from getting possession of the road, except they fixed up a judgment of some kind in his, Chamberlain's, favor, and then (as Mr. Kilbourn then told me) the company confessed the judgment to Chamberlain, without knowing how much they owed him, to cover whatever it was when they found out. They had not then got their estimates, but that he had not at the time any idea that the company owed Chamberlain any such amount as the judgment."

In this statement Mr. Cleveland's mind was in a singular state of confusion. He represents me as stating to him that Mr. Chamberlain went into the country and after two days returned, made certain communications to me of insufficiency of lien under his lease, &c. The fact was that Mr. Cleveland told me that he had understood such to be the fact, and asked me if it were not so. This is not very material, except as showing the animus of his testimony on that occasion, and may explain the material error into which he falls in the latter part of his statement. I never stated to him "that the company confessed the judgment to Chamberlain without knowing how much they owed him." The amount had been ascertained before the judgment was confessed, and I so stated to Mr. Cleveland clearly and distinctly in the conversation to which he alludes. He evidently got confused in his mind the statement to that effect in reference to the lease, and applied it to the judgment.

(The foregoing questions and answers are objected to by Mr. Emmons, because Mr. Chamberlain is not connected with the motives of the company, nor affected with notice thereof.)

Question. Was Mr. Cleveland's claim included among those impending in view of the board?

(Objected to.)

553 Answer. It was, I think, in common with others. No such exclusiveness, however, was given to it as Mr. Cleveland states in his testimony before the investigating committee.

I don't think Cleveland's impending judgment had any particular influence at that time. I can't answer for the rest of the board.

The New York reasons had much the most influence on my own mind. I can't say that the matter was hastened by the pending claim of Cleveland. I don't know that it was. It was rather a hurrying time with us. Other matters were pressing. I was only temporarily here, and in a hurry to get back to New York. My present impression is that Mr. Chamberlain first suggested the judgment to me. It was founded on the opinion of his own counsel. It had particular reference to the iron, which Vose, Ludington & Co. were endeavoring to reclaim, he understood. I had simply one idea, to secure the road. I wanted first to secure the completion of the road; second, to protect the Wisconsin stockholders. These were the paramount considerations in my mind. Next, my desire was to secure Mr. Chamberlain. This is the order of motives in my mind. I supposed Mr. Chamberlain's would be classed differently. He wanted, I suppose, first to secure himself. In order to secure these objects, I deemed it certainly necessary to have the lease and the judgment before Cleveland should get a judgment. Doubtless I explained my general views to the board. How far I mentioned them in detail I can't say. I can't say precisely what motives may have influenced them. Mr. Cleveland's claim may have been mentioned in the conversation between him (Chamberlain) and me. There were some attachments there, and there was fear of more attachments every day. They would have hastened our operations without Mr. Cleveland's claim. Mr. Cleveland's claim may have been spoken of between me and Mr. Chamberlain, but not in the way Mr. Cleveland has stated, or I should have remembered it, for I would not then have admitted to anybody that these motives influenced us to make the lease and confess the judgment. No such view was presented between us. The iron was to be devoted to the use of the road, and Mr. Chamberlain was to have the use of the road to secure him. The lease shows all this. There was nothing said between Chamberlain and me, I think, as to whether the iron was to be sold for his benefit, or laid on the road; I understand the agreement to be that the iron was to be laid on the road, and secured to the road for that purpose. This, I understand, was previously provided for in the lease. This was the scope and object of the arrangement with Chamberlain, I understood. I don't remember by whom the first lease was drawn. I presume by Mr. Steney or Mr. Palmer. Mr. Chamberlain did not tell me, after the execution of the lease, whether he was satisfied. I suppose he thought it was sufficient. I don't think he stated to me what attorney advised him that a judgment was necessary. It was within a short time—two or three days—after the lease was executed that
554 the judgment was entered. The lease was executed within a month after I heard of it. Mr. Chamberlain proposed a lease by way of security, or to have control of the road—to have the revenues of the road under his control. This he wanted before the 4th of September, when I went to New York. He wanted a mortgage on the revenues of the road—possession of them, or a lien of them, until he should get his pay. After my return, the papers were executed as soon as they could be made, without any delay—

in two or three days, I presume. I think we directed Mr. Woodward to make an estimate of the amount due Chamberlain, before the lease was made, but that he had not had time to make it when the lease was made.

As far as the lease was concerned, I considered the amount of indebtedness of no consequence, and I think nothing had then been said about a judgment. Other members of the board may have spoken about a judgment. I speak only of what I know myself. Most of the conversations, I think, were between other members of the board and Mr. Chamberlain. I was away a good deal, and he was in constant intercourse with other members of the board. Most of my impressions may be rather the results of conferences than of any conversations held by me.

I have been an engineer, and practically acquainted with railroads.

Question. How long would it take a chief engineer to make the surveys and estimates necessary to determine the amount of the work that was settled by the judgment to Chamberlain?

(Withdrawn.)

I left the business at home in the hands of Messrs. Goodrich and Kneeland. I was away from home a good deal, and attended to the business away from home mostly.

Question. Do you know, or have you any grounds for believing, and if so, what are such grounds, that Mr. Goodrich or Mr. Kneeland, or any other director of the company, had any interest in any contract between Mr. Chamberlain and the company, or in the profits or proceeds of any contract?

(Objected to as incompetent; 2dly, that it calls for incompetent evidence; 3dly, that it calls for immaterial and irrelevant evidence; 4thly, that it is a supremely impudent question for the complainant in this suit to put in the mouth of his counsel.)

Answer. I have no knowledge of any such interest; and I have no grounds for believing that any such interest exists.

Cross-examined by Mr. Emmons:

Question. In what you have stated to be your motives in making the lease (so called) and the confession of the judgment, was Mr. Chamberlain anywise privy thereto, to your knowledge, any further than an effort or a manifested design on his part to secure a bona fide debt due to him from the railroad company?

555 Answer. I don't think that I explained to him my motives; nor do I think there was any such explanation of motives between him and the company in discussing the matter of those securities; in other words I do not think our motives were in any way made an element of the arrangement.

So far as anything was said to me by Mr. Chamberlain, it was evident that his motive was to secure payment for the debts due and accruing to him by the company; I allude to the term "accruing indebtedness" only to what is expressed in the lease. The judgment was for a specific amount then due. I don't remember on what day that lease was executed. The chief engineer made a report of the

amount due to Mr. Chamberlain, on which the board acted. I presume he had made monthly estimates.

I never had anything to do with those. The amount reported due was the basis on which the judgment was confessed. So far as I knew, the amount reported was correct. If I had not supposed so, I would have been the last to sanction the arrangement. The estimate was carried to the credit of Mr. Chamberlain, and a balance struck by a deduction of previous payments, and the amount due to Mr. Chamberlain thus ascertained from our books.

Re-examined:

The usage is for each assistant on each portion of the line to make up his monthly statement or estimate. I don't know whether the amount found due to Chamberlain, and for which judgment was entered, exceeded the aggregate of the previous estimates, deducting therefrom the amount previously paid. The leading object with me, and so far as I know with the other directors, was the completion of the road. The understanding, so far as I know, was that the contract between the company and Chamberlain was not abrogated by the lease. The judgment was not in derogation of the lease, but to carry out the objects of the lease.

Question. Was there an understanding at the time that Mr. Chamberlain proposed that the judgment should be given to him, that it should be used in any way inconsistent with the completion of the road?

Answer. No. I had heard, prior to the conversation between Mr. Chamberlain and me, two months prior, that Vose, Ludington & Co. were going to attempt to reclaim the iron. I heard it in our office in New York. I think the commencement of that agitation was as early as the beginning of August; I don't know but sooner. Probably Mr. Chamberlain's object in proposing the judgment was not only to protect him against Vose, Ludington & Co. but also against Cleveland's claim.

Question. Will you state whether, by virtue of the prior contract with Mr. Chamberlain, he, upon the work being stopped, was
556 entitled to any damages, and whether the change in the contract, and the allowance of $200,000, was in good faith, or a violation of the preceding right of the parties?

(Objected to by Mr. Emmons as irrelevant and immaterial; also, because the counsel for the complainant is trying to borrow a legal opinion from the witness.)

Answer. The allowance, so far as the board was concerned, I have no doubt was made in good faith; whether it was in violation of the right of the parties under the contract, I am not able to state. He asked us $300,000, and we offered him $150,000, in consideration of his services in running the road and managing it, for which it was not expected that he would charge anything. It was, after considerable discussion, resolved to give him $200,000. With that he was not satisfied. He claimed that the company had no right, under the contract, to suspend the work, unless they had previously complied with the contract on their part, by paying up all the amounts due on it.

I desire to correct the report of my testimony in this. When I answered that I deemed it necessary to have the lease and judgment before Cleveland should get a judgment, I added in connection, and by way of qualification, that I did not then expect that Cleveland was going to get a judgment; and that I had been assured by my counsel before then, and I was then and afterwards assured, that Cleveland would not get a judgment against us of any consequence, and that we should probably get a judgmeut against him. I think that my answer, as taken down, does not convey correctly the impression that it made, or was intended to make.

Further examined by the complainant's counsel:

We did not have specific reference to Mr. Cleveland's suit, in the dispositions we made. That was included among the other debts.

Cross-examined:

I mean *the company* by "we."

Re-examined:

In our conversations with Chamberlain, the principal matter talked of was his security. It was also mentioned and understood that he should go on with the work.

Question. Did not Chamberlain know at the time of this lease and judgment that your motives in part was to guard against the dangers you have spoken of—to protect the interests of the company—insure the completion of the road?

(Objected to.)

Answer. I don't think I explained to Mr. Chamberlain any-
557 thing about my motives in that respect. The subject discussed between him and me was the security for his benefit.

Question. At the time of this leese and judgment, did not Chamberlain know that the Cleveland suit was on trial?

Answer. I don't know. I don't know myself that the suit was then on trial. I don't know whether I then knew it at tha time the lease was made. I don't think he urged that matter as a motive. In connection with the negotiations between Chamberlain and us, in regard to giving him these securities, I don't think the Cleveland matter was specially mentioned, but I dare say that was mentioned in connection with other matters.

BYRON KILBOURN.

FRIDAY, 28*th May*, 1858.

Benjamin H. Edgerton being duly sworn on the part of the complainant, says:

I am a civil engineer; I have been one over twenty years. I have been engaged on the Mississippi road since it was started, about nine years. I have been engaged almost wholly in Wisconsin. I have become familiar with the surface of that part of the country which I have been over. I have seen a considerable portion of the State. I have been over part of the La Crosse route last winter. We left here about the seventh day of December last, and were on the route until the sixteenth or seventeenth.

Question. Did you make any observation as to the ballasting between Beaver Dam and Portage?

(Objected to.)

Answer. We made only casual observations. We had no time to make accurate measurements. From Fox lake we went on foot to Beaver Dam, seven miles; and the rest of the way to Portage our observations were made from the cars. The distance from Beaver Dam to Portage is about thirty-four miles. I think I have not the minutes we made; I think Mr. Marshall took them.

B. H. EDGERTON.

Charles E. Jenkins, being duly sworn on the part of the complainant, says:

I was a director in the La Crosse road from some time in April, 1857, until some time in October, 1857. When in town I generally attended the meetings of the board when notified. I recollect that a contract was made by the road with Mr. Chamberlain, in January, 1857.

Question. Will you state what you know on the subject of the negotiation of that contract, the parties with whom it was negotiated, and its adoption by the board?

(Objected to.)

Answer. I don't know with whom the contract was negoti-
558 ated on the part of the board. I was one of the executive committee, but had nothing to do with the negotiation. I think the matter was reported to the board for their action. I think Mr. Kilbourn was one of the most active men in pressing it on the board; I am not sure.

Question. Do you know who were the parties in interest in that contract with Mr. Chamberlain? and if you do not know, do you know any facts indicating who were? and if so, state them.

(Objected to by Mr. Emmons.)

Answer. I do not know who were the parties interested, if any, with Mr. Chamberlain in that contract. I have no knowledge of any facts indicating who were interested. I have suspicions on the subject, which have arisen rather from my knowledge of the men than from any knowledge of facts.

(The last answer specifically objected to by Mr. Emmons.)

I was a member of the board, but not present when the lease was given to Mr. Chamberlain. I had a conversation with Mr. Chamberlain previous to that time.

Question. What motives or reasons were spoken of, if any, for giving the lease?

Answer. To secure Mr. Chamberlain for moneys expended on the contract.

Question. What other motives were assigned?

Answer. The general reason was this: the affairs of the company were getting very much embarrassed, and there was a large amount due to Mr. Chamberlain, and he desired to be secured, and proposed to be secured by taking a lease of the road, to which I assented. On

reflection, for reasons which I need not detail here, I determined not to attend the meeting of the board held for that purpose, and did not attend.

Question. Was any allusion made by Chamberlain to the suit of Cleveland and the other liabilities of the company?

Answer. There was a general reference to the fact that the company was embarrassed, but I remember no allusion to any specific claim. At that time we did not think much of Cleveland's claim. This was some time before the lease was given—I think before Kilbourn came home from New York.

Question. Was not that—the embarrassment of the company—assigned as a reason why the lease should be given?

Answer. Yes.

Question. Was anything said as to the protection the company would receive from the lease, or the interest it had in giving the lease? or about the company having the road completed?

Answer. I think not. My conversation with him was brief.

Question. Who were the principal controllers of the affairs of the company at that time?

Answer. Kilbourn was the chief man. To all intents and
559 purposes I regarded him as the company. Mr. Kneeland and Mr. Goodrich were next, and were about on a par.

Question. Were you present at the time the authority to confess the judgment was given by the board?

Answer. I was.

Question. Will you state the motives and objects of confessing that judgment, as urged at the time?

Answer. The only object I knew of was to secure Mr. Chamberlain.

Question. Was anything said at the time about protecting the iron by means of the judgment?

Answer. I am not positive, but I think there was. I think the object of the judgment was to give Mr. Chamberlain the first lien on the road and its property, subject, of course, to the first mortgage.

Question. Was it not then understood that Mr. Chamberlain was going forward in the completion of the road?

Answer. I think it was.

Question. Was it not the understanding that Chamberlain should use the judgment to protect the iron from the claims of other creditors, so as to secure it to be laid down on the road?

Answer. I have no recollection of any such object being stated.

Question. Did he not take the lease as security?

Answer. I remember stating to Mr. Chamberlain myself that I thought the lease was insufficient; that I thought he also ought to have a judgment as security. I was desirous to see him secured beyond a contingency. I presume his counsel had suggested it to him before.

Question. Was not one reason why you preferred to secure Mr. Chamberlain above all other creditors because that would insure the completion of the road?

Answer. That was one reason with me personally. Besides, I thought that he had the best claim to be secured. I felt personally very friendly to him and desired to see him secured.

Question. Was the amount for which that judgment was given actually due to Mr. Chamberlain when it was entered?

Answer. That I don't know.

Question. Prior to that time, and in the month of September, had the officers of the company stated any other amount as due to Mr. Chamberlain? and if so, what amount?

Answer. The only knowledge I have on that subject is derived from hearsay.

Question. At the time of the conversation, prior to giving the lease, was any sum stated by him as due to him?

Answer. I think not.

Question. How did the board arrive at the amount for which judgment should be entered?

560 Answer. From estimates and statements submitted by the chief engineer, and, I think, by the secretary or Mr. Goodrich. A paper was brought in at a meeting of the board, containing some figures, and the sum total of the amount due to Mr. Chamberlain.

Question. Whas there any particular examination of the items of that account?

Answer. I made none. I did not see any, except by Mr. Kilbourn and Mr. Goodrich, who made some examination of the statement. I know nothing about the matter, any way. I remember Mr. Kilbourn expressing some surprise at the amount exceeding his anticipations, and he and Mr. Goodrich examined that paper. They did not examine any other papers or vouchers that I know of. They might have done so.

Question. Was there any understanding at the time that this was only a settlement for the time being, and that the true amount should be afterwards adjusted?

Answer. No; Mr. Chamberlain claimed this sum to be due to him. There was a bonus allowed him for something which it was proposed to include in this judgment, but he would not consent for fear it might invalidate it.

Question. Was Mr. Chamberlain present at that meeting?

Answer. Part of the time; I think not all. The amount of the bonus was large; I think, $200,000, but I am not sure. Mr. Chamberlain objected to having that to go into the judgment; he said he wanted the judgment for the amount due him.

Question. What reason did he give for a doubt as to the safety of including the $200,000 bonus?

Answer. I don't remember what the bonus was for. A portion of it was for something to be done thereafter, I think. A doubt was expressed by somebody, Mr. Chamberlain or perhaps myself, whether the judgment would be valid if anything more was included in it than the amount then actually due. The judgment was not included, because the board and Mr. Chamberlain desired that the judgment should be valid in all respects.

Question. Was the board unwilling to include it, or Mr. Chamberlain unwilling to receive it?

Answer. He was unwilling to receive it. I think the board was willing to include it. I, personally, was not. Mr. Palmer, I think, concurred with me. Mr. Kneeland was not present. No vote was taken on the question, and I don't know how the majority stood.

Question. Were any other objections urged to it than it invalidating the judgment?

Answer. I don't remember any other grounds.

Question. Was Mr. Samuel Brown present at the meeting?

Answer. Yes; Mr. Brown and Mr. Whit were both present.

Question. Do you know that Mr. Chamberlain had received
561 $200,000 in bonds, or was anything said at that meeting about his having received it?

Answer. No.

Question. Were any parties besides Mr. Chamberlain interested in that bonus except himself?

Answer. I have no knowledge or information on that subject.

Question. Do you know any facts tending to show such an interest?

Answer. I can't say that I do. I know of no fact which would go to establish that any director of the board was interested with Mr. Chamberlain in that judgment, or the bonus talked of at the time.

Question. Do you know of any director of that board having received directly or indirectly from Mr. Chamberlain or any other person any consideration whatever for any matters growing out of the Chamberlain contract with the road?

Answer. I do not.

Cross-examined by Mr. Emmons:

On reflection I can state what the bonus was for. The consideration of it was as expressed in clause 4 of the contract made by the company and Mr. Chamberlain, dated 26th of September, 1857.

I think that the objection to including that $200,000 in the judgment came from Mr. Palmer, and that the reason why it was not included in the judgment was that the bonus included prospective damages as well as past.

I could have answered more clearly on this point had I then read the contract, which I have since looked at. I mean the contract contemporaneous with the lease.

Re-examined:

Question. At the time the lease was given, were there seven directors in Milwaukee without yon?

(Objected to.)

Answer. I don't know.

Question. At the time the confession of judgment was given, were the seven directors present?

(Objected to by Mr. Emmons, but not by Mr. Palmer.)

Answer. Yes; I feel positive in my own recollection that but seven were present.

CHARLES E. JENKINS.

Edwin H. Goodrich, being duly sworn as a witness on behalf of the complainant, testifies and says:

I have been a director of the La Crosse road since it was incorporated up to the first day of April last. I recollect the fact of Mr. Chamberlain's contract in January, 1857. I was then a member of the executive committee, and remained so until about October, 1857.

562 Question. Did you, as one of the executive committee, take part in letting the contract to Mr. Chamberlain?

Answer. I did as a member of the board or of the committee. I don't know whether the board or the committee let the contract.

Question. Are you aware that since then there have been various modifications of that contract?

Answer. I am.

Question. Have you at any time, directly or indirectly, had any interest in or expectation of benefit from any contract or modification of a contract, or arrangement, or agreement, or understanding between the La Crosse and Milwaukee Railroad Company and Mr. Chamberlain?

Answer. I have not.

Question. Have you at any time received any money, property, right of action, or other valuable thing from Mr. Chamberlain or from any other person acting for Mr. Chamberlain?

Answer. Yes; I have.

Question. For what?

Answer. As a salary for my services in managing the La Crosse and Milwaukee railroad, since the execution of the lease.

Question. Have you never received anything else?

Answer. I have not.

Question. Have you any promise or agreement for anything (further than this salary) legal or honorary?

Answer. I have not.

Question. You have answered to the third recorded question that you have no interest, and have had no interest, and no expectation of interest in such contract, agreement, or understanding. I now ask you if any member of your family, any relation, or any person for you has any such interest or expectation?

Answer. Not to my knowledge.

Question. Do you know, either from conversation with Chamberlain, or with any other director, or from any other source, whether or not any person besides Mr. Chamberlain is interested in the contract made by him with the La Crosse and Milwaukee Railroad Company?

(Objected to by Mr. Emmons so far as relates to conversation with others than Mr. Chamberlain.)

Answer. I know by common report that Daniel L. Wells is interested in the contract. I don't know of any other person.

Question. Have you yourself, or do you know of any other person besides Mr. Chamberlain, who has or has had any interest, direct or indirect, any hope of reward or expectation of benefit growing out

of the contract or modification of contract of Mr. Chamberlain with the La Crosse and Milwaukee Railroad Company, or growing out of the profits, or moneys, or bonds, or stock to arise out of, or to be received in consequence of the contract, either by virtue of
563 any arrangement, understanding, or agreement, express or implied, either with Daniel L. Wells or with Mr. Chamberlain?

Answer. I do not.

Question. Were you a member of the board at the time the judgment was confessed?

Answer. I was.

Question. How many directors were present at that meeting? Were their names recorded; and who were they?

Answer. I think there were eight. I don't know whether their names were recorded; they were Whit, Brown, Palmer, Strong, Jenkins, Hadley, Kilbourn, and myself. That is my recollection.

Question. At the time of giving the lease, so called, how many directors were present and voting on that proposition?

Answer. I can't answer that question. I was present. I can't recollect the names of those present.

Question. Do you recollect the time of the giving of the judgment?

Answer. I do.

Question. When did you commence acting under Mr. Chamberlain, and receiving a salary as you have stated?

Answer. On the first day of October last.

Question. What salary do you receive?

Answer. Three thousand dollars.

Question. When did you make that arrangement with Mr. Chamberlain?

Answer. I never exchanged a word with him on that subject. I fixed it myself. I fixed the salary of all the men on the road, and thought if I did that I was competent to fix my own. It was credited to me on the books.

Question. Who asked you to remain there under him as the superintendent?

Answer. I don't know that any one did.

Question. Had you, prior to that time, been acting as superintendent in behalf of the company, employing the men, &c.?

Answer. I had.

Question. Then did you continue subsequently discharging the same duties?

Ans. I did.

Question. Without any agreement or understanding to that effect between you and Mr. Chamberlain?

Answer. No. I did not continue without such understanding.

Question. When did you first have this understanding with him that you should so continue?

Answer. On the first day of October.

Question. Did you have any talk with him on the subject before that?

Answer. I did not.

564 Question. Prior to that time (1st October, 1858) did you not have an arrangement with him, Mr. Chamberlain, by which you were to have five thousand dollars a year? Have you not so stated?

Answer. I never have.

Question. At the time he requested you to continue in the superintendence of the road, what did he say to you?

Answer. He did not request me. I did not say he did. I said there was an arrangement.

Question. What was the arrangement?

Answer. I said to him that I would like to continue in the management of the road. He said I could do so for the present; that is all that ever passed between us, then, or before, or since, on that subject. I suppose I am like any other employee on a railroad—there during good behavior.

Question. Was the supplement (the indorsement on the contract of the 30th April) made by you or by the executive committee?

Answer. It was made by the executive committee.

Question. Which members of the executive committee assented to it?

Answer. Garrett Whit, Moses Kneeland and myself. The chief engineer was also present.

Cross-examined:

That modification of the contract was signed on the day on which it bears date. I don't recollect whether that action of the committee was confirmed by the board; they recognized it and acted upon it; the chief engineer made estimates on it, and payments were made on it. No work had been done on that tunnel until after the date of the contract, the 30th day of April. The engineer made monthly estimates.

I can recollect who were at the meeting when the judgment was confessed, and not who were present when the lease was executed, because the judgment was entered, and it was authorized after the first of October; and I wanted to be excused from acting at that meeting of the board in this matter, on account of my relations to Chamberlain, having been there employed by him as I have stated.

EDWIN H. GOODRICH.

FRIDAY, 23*d July*, 1858.

Thomas E. Purdy, sworn for the complainant, says:

I am a civil engineer. I have been one for ten or eleven years. I have been on railroad work most of the time when I have been doing anything. Mr. Marshall and I were partners as civil engineers last fall and winter.

He and Mr. Edgerton and myself have made surveys over the La Crosse railroad together, at the request of Mr. Cleveland. It was in the latter part of November, or the first part of December. We

565 made minutes of the results of our survey as we went along. I kept the minutes of the survey of that part of the road that

I went over. Those contained the results of my own work. Mr. Marshall had a separate book. I don't know whether Mr. Edgerton also kept a book or not. I was only with them one day and part of another. I figured up in my book the result contained in it, and I think we all figured together. I put down the number of yards that I measured. Mr. Marshall and I went once with Mr. Cleveland without Mr. Edgerton. We kept a book then. I don't know who has it. I have not got it. I have since that time removed from Milwaukee to Chicago. I did not take that book with me. The last time I saw my book of minutes was about the middle of December. I did not take it with me to Chicago. The last I knew of it, it was here in the office—in our office. I had a conversation with Mr. Cleveland about those minutes, when he came down to subpœna me. I did not tell him I had given them to somebody to keep for me. I told him I did not know where they were. I did not tell him he could not have those minutes until he paid me for my work. I have not the remotest idea where that book is. I have not seen it since I left here last spring, and not since last winter that I know of. I threw it down on a table in my office, where it lay with a half dozen others looking like it. I have not seen it since then that I know of.

Question. Did you examine the ballasting from Hartford to Fox lake, and from Fox lake to Portage, or any portion of it on the road, with a view to see how much ballasting had been done?

(Objected to by counsel for Mr. Chamberlain as irrelevant, and as improper, because the testimony designed to follow it, as stated by complainant's counsel, is incompetent.)

Answer. I think we did. It was the upper end of the road. I don't recollect the names of the towns. It was at Fox lake, and on both sides of it. We examined the ballasting west from Portage, I think as far as the iron was then laid. I can't now undertake to say what amount of ballasting had been done west of Portage. I did not have a copy of the engineer's report, filed in this case, as part of an answer. I saw such a copy.

Question. How did the amount of ballasting done compare with the statement in the copy?

(Objected to by Mr. Chamberlain's counsel for the reason before given, and because it does not appear that the witness even saw the original on file, or knows this to be a true copy.)

Answer. I don't recollect. I don't know what Mr. Cleveland's object was in having those surveys made. I suppose it was to procure testimony to be used in this case. I did not inform Mr. Cleveland that my memory was so bad that I could not afterwards recollect the results. Mr. Cleveland paid us a hundred and fifty
566 dollars for our work. This affidavit now shown to me (being one filed in the cause December 19, 1857) was made by me among others.

Question. Is that affidavit true?

(Objected to as irrelevant and immaterial.)

Answer. It is. I see what is stated here; I can't say anything more than is stated here; I can't undertake to prove what is stated

here; I have no memory on the subject independent of what is stated here; when this affidavit was made out, it was made out correctly; I could not remember without this; this says one-third of the ballasting was done on the ten miles next east of Kilbourn City; I can't tell without this; I should take this word for word; we did the work in the early part of December; this affidavit was made immediately after we returned; no ballasting was done west of Kilbourn City; it says here (in the affidavit) from a point seven miles west of Portage to Portage, and from Kilbourn City six miles west; the track is ballasted as far as is needed, but the material to ballast was obtained on the same section. The amount of ballasting on the ten miles first spoken of, did not exceed 18,000 cubic yards, it says in the affidavit; west of Portage no ballasting was done except what I have stated, so I find in the affidavit. It was our opinion at the time, I suppose, that not over one hundred thousand yards of ballasting was done between Beaver Dam and Portage City. We went over the road to make an estimate of this; we rode part way and walked part way. I don't remember the town where we got out to walk; I think it was Fox lake.

Question. What is a fair price for the ballasting on the division from Portage City to Beaver Dam, what was at that time?

(Objected to as irrelevant and immaterial.)

Answer. I suppose twenty-five or thirty cents. We then estimated it at twenty cents. I should think that was a fair estimate, but there are a thousand things to be taken into account. I think we examined the embankment at Fox lake. It is put down here at 15,000 cubic yards, unless there has been a material settling. I thought at the time that twenty cents was a fair price per cubic yard. I won't undertake from anything outside of this, from mere memory, to change anything in this affidavit. We examined the solid rock from Portage City to Lisbon; does not exceed 21,039 cubic yards. The loose rock does not exceed 53,632 cubic yards. The grading from Portage City to Lisbon would not exceed 15,000 cubic yards per mile. Beyond New Lisbon about three miles and a half of grading was done, which would average not over 5,000 cubic yards to a mile. I was up at the tunnel once before. I was not there with Marshall and Edgerton the second time. On the west side of the tunnel the rock excavation was pard down at 8,503 yards. I did not measure either side of the tunnel approaches. Marshall and Edgerton measured them. There was not to exceed one mile and thirty-six hundredths of side track
567 west of the tunnel, where part of these measurements were made. I did not make all of them myself. There are only two cattle-guards made of five railroad ties, and two by four strips laid across the top. The entire lumber, board measure, in the two, would be about one hundred feet. Ten dollars for the two would be a full price; so it says in the affidavit. There was one highway bridge over the track, composed of about fifteen thousand feet of lumber, board measure, and worth in labor and materials about from four hundred dollars. There are two under passages, costing in labor and materials about one hundred eighty-seven dollars each; and one arched

passage way containing about eleven hundred yards of masonry, which would fairly cost about forty-four hundred dollars. All the other crossings would not exceed fifty dollars. There were bank walls only in three places, amounting in the aggregate only to 320 cubic yards; which, at three dollars per yard, amounts to nine hundred and sixty dollars. The entire extra haul beyond 500 feet between Portage City and the tunnel was 34,350 yards, for distances varying from one hundred to two thousand feet, amounting, at the contract price, to $2,353.

Between Portage City and the tunnel, aside from the forty-six miles graded, the grubbing and clearing does not exceed one mile. I was over the road beyond the tunnel; it says here, does not exceed twelve miles and a half. I have nothing to say to change this in any way. This is as near as I can now recollect the true state of facts. I don't recollect anything more than that I gave the minutes in at that time. I can't, from memory alone, now say that this is true; nor can I add to it nor take from it. Between Lisbon and La Crosse, the whole amount of excavation, exclusive of the tunnel approaches, does not exceed 78,835 yards of earth, and 1,086 yards of rock.

There are 110½ yards of bridge masonry, and ten yards of culvert paving, and an extra haul of 6,432 yards amounting (for the haul) at the contract prices to $169 69; also 432 feet of timber, worth about 108 dollars. There are also 107 yards of culvert masonry; also 30 yards of stone delivered for culvert. That constituted all the work west of New Lisbon. I went over this with the honest desire of ascertaining the entire amount of work done. I gave in certain sums at the time I made this affidavit.

I swore then to the sums I believed correct.

Question. Do you now believe those sums to be correct?

Answer. I have no reason to suppose otherwise.

I have not received from the defendants or any or either of them any money or valuable thing whatever, or the promise of it.

Cross-examined by defendant's (Chamberlain's) counsel:

I do not know who all of the defendants are. I do not know any of them that I know of. I know Mr. Chamberlain by sight
568 only. I never spoke to him in my life. I do not know Mr. Kneeland or Mr. Ludington even by sight. I do not know Mr. Kilbourn, and never saw him that I know of.

I was engaged the first time three days in making examination. We were *were* engaged in all, in both examinations, about two weeks, I think, including the time spent in going and returning. In my testimony to-day, as to quantities and amounts, I do not speak from present recollection. I have only read from the document which I once signed, the amounts there mentioned, which, at the time I signed the paper, I believed to be correct; and I know nothing to the contrary now. I do not pretend to speak from any present recollection of the matters.

We arrived at the quantities of embankment, excavation, and ballasting by measuring sometimes from the bank and sometimes from the furrowing pits. It is hard for me now to recollect the number

of miles we examined in all, as it was in scattered pieces. The second time I went through with Mr. Cleveland, we began (Mr. Cleveland and I) west of Sparta. I worked towards La Crosse first. When we had got that done, we came back and worked this way from the point west of Sparta, where we had begun. We had a team, and sometimes rode, sometimes walked; we walked as we measured, and we rode from point to point where work had been done. We followed the public road. We could see where the work was done. The railroad was not all the way in sight of the public road. We inquired to ascertain wherever work was done. We made inquiries as to where work was done; and examined wherever we could hear of work being done. We had to inquire of others to ascertain where the line was in places where no work was done. If we were correctly told, then there was little or no work done that we did not see. If we were not correctly informed where the line was, there might have been miles of road done that we did not see. The work was done only in patches; and where no work was done, we were compelled to rely on information from others to ascertain the line of the road. But, so far as we could ascertain, we viewed all the work done. Between Beaver Dam and Portage we measured only the road-bed, and none of the borrowing pits. We did not have the chance to get the results exactly accurate, which we would have if we had had more time. I should be loth to say of results attained in that time, that there was not a yard more or less done on the whole work.

Question. Are you willing to say, as an engineer, that without the original field-notes, you can go on a piece of work like that, and arrive at anything like a correct estimate of the amount of work done? I mean in the time that you had?

Answer. I should say that you could not measure it accurately. The most you could do would be to make an approximate estimate of it, you could make an estimate that you would think would
569 be sufficient to cover the amount; you could not make a perfectly accurate estimate. Where the ground was hard, you could at any time get the exact amount of work done, but if part of it had sunk, you could not tell anything about it.

Re-examined:

As near as I can recollect there was a considerable part of the work of such a nature that you could make an approximate estimate of the amount of work done; of part you could not. I intended to put down what I supposed would cover it, the outside figure.

It might fall below the amount I named, but it could not, as I then thought, (without having the cross-section) very well exceed the amount I put down. I mean the cross-section of the original ground as it was before the work was done; with them I could tell exactly; without them I could only approximate. I could probably estimate an amount sufficient to cover the amount; you could not ascertain the exact surface of the ground originally, without the cross-sections; I intended to set the figures high enough.

Question. Was there any rational chance of the amount of work done exceeding the amount given by you?

Answer. I intended to get them high enough; a man might doubt whether they would cover all the work done. It is a hard matter to answer whether the doubt would be rational.

Cross-examined:

The chief engineer who had charge of the work from the beginning, with all the notes, ought to be able to make a more accurate estimate of the work done on the line of the road than I possibly could; with those notes I could have made an accurate estimate that I could rely upon.

I desire to say for myself, that when the affidavit was made, I had my note-books with me and read off the amounts. I do not undertake to say that these figures are or are not the amounts I gave in then; I do not see any changes, and do not know of any, but if there has been any, I do not wish to be responsible for it. These figures in this affidavit are not in my handwriting; my signature to it is in my handwriting; if I had my book I could tell whether these amounts are the same I had then; without it, I cannot pretend to tell whether these figures are just as they were then.

THOMAS E. PEVERLY.

Hugh McFarlain, being sworn for the plaintiff, says:

I was last fall one of the directors of the La Crosse Railroad Company. I remember the fact of the lease being given to Selah Chamberlain. I had conversation with Mr. Chamberlain about the
570 time the lease was given; it was about the time the lease was made. He said to me at that time, in reply to my question how much the company owed him, that the company owed him between four and five hundred thousand dollars, he thought, but he could not tell exactly, and he wanted security. I was well satisfied that he got the security which he had, by the lease; it is my impression, but I would not be positive on that point, that he said the company would owe him that amount (between $444,000 and $500,000) when the road would be completed to New Lisbon.

Cross-examined by Mr. Chamberlain's counsel:

He had mentioned to me that he ought to have security.

He had applied to me as a director for the security, prior to this conversation. He was uneasy for some time before—for a month or two before—about his security for the company's indebtedness to him.

H. McFARLAIN.

MONDAY, 26*th July*, 1858.

Benjamin H. Edgerton, recalled for the complainant, says:

(The complainant's counsel, announcing that it was intended to examine this witness upon the same subject-matter, and to the same points as are embraced in the examination of the witness Peverly, the counsel for the defendant Chamberlain objects to all such testimony,

for the reasons above stated by him, and the testimony is all taken to such objections.)

Being duly sworn he testifies: I surveyed and measured, between the 7th and 17th of December last. a portion of the work on the La Crosse railroad, between Portage City and the tunnel, and at the tunnel cut. Our attention was only called to certain items—the rock excavation, the side tracks, cattle-guards, crossings. retaining walls, extra hauls, and the gravelling at Fox lake, (this side of the tunnel,) the ballasting, clearing, and grubbing. The first measurement we made was at the tunnel. We made 8,593 yards of rock excavation on the west side, and 11,128 yards on the east side, including some cemented sand and gravel, reckoned at the same price. We at least did not separate them. This estimate of rock excavation includes both the loose and solid rock. There were also 40,242 yards of earth excavation. The tunnel had not been worked at all. These excavations were merely in the approaches. The rock was mostly sand rock, soft, but pretty hard to get out. A good deal of it would require blasting; some of it, I suppose, could be got out with a pick.

Question. What would have been a fair price for that work?

(Objected to by counsel for defendant Chamberlain.)

Answer. I should think it might have been got out for seventy-five or eighty cents.

571 I should think a fair price for the earth excavation, per yard, would be about twenty cents.

(Objected to.)

This was all the work done at that time, at the tunnel and approaches.

We made an estimate of the ballasting from Portage City west. About ten miles of the road from Kilbourn City east had been ballasted. The balance of the way to Portage, and also about six miles from Kilbourn city west, appeared to have been laid upon ballast grade, or the ballast was upon the same sections. This is not usually reckoned as ballast. When the material of the road bed is suitable for ballast, ballast, of course, is not required.

That is pretty much all the ballasting that was done on the road west of Portage City to the tunnel. Some little detached pieces were done, but they did not amount to much. We called it about one-third ballasted from Kilbourn City east ten miles, there being about 18,000 yards.

Question. What was a fair price for that ballasting?

(Objected to.)

Answer. Twenty cents. That is what we paid on the Milwaukee and Mississippi railroad at that time.

On the eastern division we called the ballasting (from Beaver Dam to Portage City) 100,000 yards. We did not have time to measure this accurately, but we thought that estimate would cover it.

The distance was thirty-four miles. Twenty cents would be a fair price for that.

(Objected to.)

We did not make an accurate measurement of this, but I think we put the quantity down high enough.

There was an item also in the eastern division for filling-in Fox lake. We measured the embankment there as near as we could, and we made about 15,000 yards. Twenty cents would have been a fair price for that.

The next item is the solid rock excavation from Portage to New Lisbon, aside from the tunnel and approaches. There is no rock, I think, beyond Swanston. We made of solid rock 21,034 yards, and of loose rock 53,432 yards. There was no work of rock excavation done beyond Lisbon, except the tunnel approaches.

We found but two cattle-guards proper; they were near Portage; they were constructed of ties with slats on the top. There might have been 100 feet of lumber, costing, in all, perhaps, ten dollars. Those were all the cattle-guards there were on the road west of Portage at that time.

There was one highway bridge over the road, containing about 15,000 feet of lumber. There are two under crossings, constructed of wood, and one of masonry arched. The highway bridge would be worth, at a fair estimate, four hundred dollars. The under crossings of wood we figured at about one hundred and eighty-seven
572 dollars each; we measured the lumber and estimated the labor.

The arched culvert we did not measure; we took the quantity as given to us by the mason; he gave it to us 1,100 yards, which I presume was correct; I think four dollars a yard ($4,400) would build that culvert. There were a number of crossings on the road west of Portage, but they were common highway crossings, which we did not consider extra; they are usually reckoned as part of the contractor's work. These crossings were about at the grade, and seemed mostly to have been made by the people themselves. There were a few slight embankments and some slight excavations.

B. H. EDGERTON.

Edwin H. Goodrich, recalled for the complainant, says:

Question. Have you ever received, or purchased, or had in your possession, any bonds, or other securities, which belonged to Mr. Chamberlain by virtue of his contract with the company, or which had been in his hands, or in which he was in any way interested?

(Objected to by Mr. Chamberlain's counsel.)

Answer. I delivered to him (as secretary of the company) all the securities which he had while I was secretary; I delivered, at his request, some securities to John B. Whit, and some to Mr. Alden; all the remaining securities issued to him were delivered to him, so far as I now recollect.

Question. Have you ever had any interest, by purchase, or otherwise, in any bonds, or other securities, which had been in Mr. Chamberlain's hands, or which had been issued to him by the La Crosse Railroad Company?

Answer. I have received nothing from him; I am not prepared to answer that question until I have made some inquiries; I do not mean to say that I do recollect, or that I do not recollect; I have no further answer to make now.

Question. Do you mean to say that you do not now recollect in regard to the facts inquired into in the last question?

Answer. Yes; I do not now recollect all the circumstances necessary in order to enable me to answer that question.

Question. Do you say that you do not now recollect whether or not you have ever had any interest in securities such as are described in the question preceding this last one?

Answer. I decline to answer that question at present.

(The commissioner, at Mr. Brown's request, says that the witness should answer the question, and the witness again refuses to answer the question.)

Cross-examined by Mr. Emmons:

I do not decline utterly to answer the question, but I merely decline to answer at present. I came here to-day on request, without knowing on what matter I was to be examined. My declination is only present and not ultimate.

I was subpœnaed to-day at about half-past twelve for two o'clock.

Mr. Cleveland told me to-day that he had a subpœna for two
573 o'clock to-day, and took it from his pocket to read to me, when I told him I was in a hurry and could not wait, and I would come. He paid me no fees.

EDWIN H. GOODRICH.

TUESDAY, 27*th July*, 1858.

Benjamin H. Edgerton, recalled for the complainant, says:

We made the whole length of side tracks west of Portage City one mile and $\frac{36}{100}$, when we came back.

When we went out the side track had not been laid at Manston. This was aside from any side tracks at Portage City, which we assumed to belong to the eastern division. I think there were three or four side tracks at Portage City. I can't tell the length of them.

We made the extra haul west of Portage City 34,350 yards, the distance varying from 100 to 2,000 feet. We figured the expense of the extra haul at the contract price, $2,353.

I forget exactly how much we made the average of the distances.

The bank walls were only those that we saw. All we could make out were 320 yards in the whole, which we reckoned worth about $3 per yard. There was one bank wall west of Kilbourn city, about two or two and a half miles from Kilbourn City, and two east of Kilbourn City.

There was very little clearing and grubbing done from two or three miles beyond New Lisbon to the tunnel, so far as we saw. We passed over the route as near as we could with a team and crossed it in different places. When we did not follow it we inquired where work had been done. We inquired at one place whether any grubbing had been done there, and they told us about eighty rods had been done. There were forty-six miles of grading done from Portage city to three miles beyond Lisbon. I could not tell what proportion of the distance we followed the unfinished part of the road from three

miles beyond New Lisbon west. For about three miles this side of the tunnel we passed over the line, seeing the stakes frequently. Between these points we crossed the road I can't say how many times; I should think three or four times. No work was done that we saw along there. We walked over that part of the road from Portage to the end of the grading, (three miles beyond New Lisbon,) where the continuous grading was done, and measured the work. We made a calculation of the whole cost of the whole amount of work done on the western division at the contract prices. We made a difference between the value of the work done and the engineer's estimate of it found in the answer in this suit, which difference was $406,068, including the retained percentage, $477,344. In this calculation we estimated the prices at the contract rates, and the extra items we fixed at what we thought reasonable prices. We assumed that the grading would not exceed 15,000 yards per mile from Portage City to New Lisbon. We thought it would fall below that. Much of
574 the way the grading was light, and we were confident the work would not exceed that. We made no estimate of the amount of earth to be taken out of the cut where the tunnel is. If the western division were divided into three equal sections, I should think the grading would not exceed 20,000 yards per mile on that section, including the tunnel and approaches.

I did not go beyond the tunnel. That section would reach about three miles beyond the tunnel. Unless there was heavier work beyond the tunnel than I suppose, it would not exceed 20,000 yards per mile. When we went out, the track was within about one mile of Manston, about thirty-five miles west of Portage. When we returned it had got beyond Manston some. Where the materials for ballasting are on the same section, it is customary to put it into the road bed. By ballasting we understand hauling materials by the train over the road. It is done after the track is laid.

The object is to put on better materials than the ground affords, and to imbed the ties in it.

I should estimate the whole cost of chairs, spikes, ties, and laying, at about $1,500 per mile. I reckon 2,640 ties to the mile, at 25 cents apiece, amounting to 660 dollars. There would be about 5,280 pounds of spikes, at five cents a pound.

There is about four thousand pounds of chairs to the mile, worth about five cents a pound. Track-laying I reckon at about three hundred and fifty dollars a mile. These are the outside prices at that time.

Cross-examined by Mr. Emmons:

We kept notes on this survey. I did not keep them. One of the party kept them, and two measured. We were gone from here ten days. We were about seven days in the examination. We had not access to the original notes. We had the cross-sections, as they were on the ground most of the way. They were standing until within a short distance of Portage City. I think there were about seven miles of the way from Portage City west where the slope stakes had not been marked.

I have not had the notes themselves with me in testifying here. I have had the quantities which we made up from those notes at a previous figuring, to the best of my recollection.

I would not state positively that those are the quantities, although I believe they are. They are contained in an affidavit made at that time. I have referred to that in arriving at the quantities. I think the handwriting is mainly Mr. Brown's. I think two or three wrote on it. Mr. Carpenter wrote some, I think. I was present when it was written. I would not undertake to give a detailed statement of amounts and quantities without referring to that affidavit. I remember the distances, but I did not charge my memory with the
575 quantities. My first experience as a railroad engineer was in this State, on the Milwaukee and Mississippi road.

It began in 1849, and continued until this time. It has been mainly on that road. I have been engaged on a road in Iowa for the last year and a half. I was not chief engineer on the Milwaukee and Mississippi road. I was constructing engineer. I had charge of the road for a time when there was no chief engineer. I made all of the original surveys of that road, with a few exceptions, from Waukesha to the Mississippi. I did not make those on the Southern Wisconsin, from Janesville to Monroe.

We always keep accurate notes on the original survey. The object of the preliminary survey is to ascertain the best route. The object of the cross-sectioning of the work is to ascertain the amount of work to be done, and the cost. I did most of that on the Mississippi road. I had charge of it. The object of cross-sectioning is also to guide the workmen in doing the work. The profile shows the centre line of the road. The quantities are made up from the cross-sections. I have had six or seven assistant engineers at a time on the road. The number depends on the amount of work on hand. We usually have one for every twelve to twenty miles. It is 172 miles from Waukesha to the Mississippi. Some of the country is level, and some pretty rough. The great majority of it is pretty level.

We were employed about the road for a year, more or less. A man with sufficient help may cross-section in a day three miles, or, perhaps, not a half, or even a quarter of a mile. It depends on the nature of the work. We could do three miles of level country, even surface. Cross-sections are made every hundred feet, and sometimes more frequently. They were 100 feet apart on the La Crosse road. I think we had the benefit of the cross-sections all the way but seven miles. We examined forty-six miles of road graded. We did not examine every one of those cross-sections. There was no occasion for it.

We did not attempt to ascertain the exact amount of grading done. Where there was any extra haul or rock work done we examined all the cross-sections.

We determined whether there was extra haul by the stations. There were cases where it was apparent by simple inspection that there could not be any extra haul; cases where the material had been wasted. I only went to the tunnel. Peverly, Mr. Marshall, and a

young man, his assistant, named Clark, I think, were with me. From Portage to the tunnel we rode. There we rode back from a mile this side of the tunnel to the other end of the embankment. We surveyed on our way back. The commencement of the continuous grade was about twenty miles this side of the tunnel. From there we walked back to Portage, forty-six miles. The whole distance was sixty-six miles. We were about ten or twelve hours going from Portage City to the tunnel. We went on the train to Manston
576 (nearly.) The most we did in one day of the forty-six miles was about fourteen miles. In one day we walked nineteen miles, but part of the work we had done the day before; part we did the next day. We were four days in going over this forty-six miles.

At Fox lake we measured the length of the embankment and the depth as near as we could arrive at it. We saw in one place where the new material had been placed on the different kind of material. There was water there. Where we saw the embankment it was resting on a material that had been previously filled in, as we learned upon inquiry. I have had experience on sink-holes.

We cannot in such a case make an estimate of the amount of the material which has gone into a sink-hole by a simple inspection.

We should have to go to the borrowing pit, or bore into the embankment to ascertain the amount of material put in. Usually a sink-hole that has been filled shows evidence of its being a sink-hole by the appearance of the earth about it. We did not bore or go to the borrowing pit. From the tunnel to the embankment we followed the line of the road as near as we could with a team. We laid the stakes on the line. They were a hundred feet apart. In one or two cases we saw some ties piled up, where we did not see the stakes. Our data for the estimate we made of the value of whole work done were our estimates of the work done and our prices. I only know the work done beyond the tunnel approaches from Mr. Peverly's statement. We were a little over half a day engaged in the survey at the tunnel and of the tunnel approaches. This was in December. The weather was not very cold. It snowed three or four inches in the night that we were at the tunnel house. There was that amount of snow on the ground when we were at the tunnel. That amount was very little obstruction to our survey. The banks were very nearly perpendicular, and there was very little snow on the sides.

We call loose rock excavation any ledge that can be taken out without blasting. To the best of my recollection the tunnel approaches on the west side were at the top of the cut in the widest part about seventy feet across. We could tell pretty nearly by the appearance of the sides what was solid rock and what was loose rock. I never saw the work about there until I was there upon this occasion. We arrived at the amount of bank wall by measuring the length, breadth, heighth, and thickness, as near as we could ascertain the latter. I could not now state where those bank walls are more precisely than I have. One, I remember, was in sight of Newport, near where a switch went off into the bank.

We assumed the thickness of the walls. The ends of the walls

were visible, so that we could measure the length. There was one place, where the tunnel culvert is, where there might have been a bank wall which had fallen out. There was very little appearance of any, and we did not estimate any. We walked the track the entire forty-six miles.

577 Re-examined:

The affidavit referred to in my cross-examination was made by me and others. At the time it was made the quantities in the affidavit were taken from those in our note-book. The quantities were compared with those in the note-book, and they agreed. I think that we followed the line, on or in sight of it, for about six miles between the tunnel and the grading. Three miles (about) were from the tunnel this way, and three miles were from the end of the continuous grading west.

B. H. EDGERTON.

Garret Vhit, being duly sworn (for the complainant) says:

I was a member of the board of directors of the La Crosse and Milwaukee Railroad Company in 1856 and 1857. I do not recollect when the contract was let to Mr. Chamberlain for building the western division of that road: nor do I recollect of ever seeing the contract. I think I was not a member of the board in 1855. I was a member of the executive committee of the board in 1857, commencing, I think, in the spring. I do not remember a supplementary contract made with Mr. Chamberlain in April, 1857, in relation to the tunnel or approaches to the tunnel. I do not recollect being present at any meeting of the committee when that contract was agreed upon. It is possible that I might have been there when that contract was made, but it appears to me that I would have recollected it if I had been there. The executive committee met every two or three days. It was composed of Mr. Goodrich, Mr. Kneeland, Samuel Brown, and myself. I do not know whether Mr. Kilbourne was a member or not. He was very seldom with us. I do not know what that supplemental contract is.

Question. Did you ever officially authorize a contract with Mr. Chamberlain for excavating the approaches to the tunnel at two dollars a yard, and the tunnel itself at five dollars a yard?

(Objected to by counsel for defendant, Chamberlain.)

Answer. I do not remember of any such thing.

Question. If you had authorized such a contract during the year 1857, don't you believe you would have recollected it at this time?

(Objected to by defendant Chamberlain's counsel.)

Answer. I think I would remember it. It is possible that such a thing may have occurred, and I not now remember it, but it appears to me not. The executive committee kept records of their meetings; almost always a young man, Mr. Whaling, kept minutes. Those minutes were preserved, and I think are now in the office of the secretary of the company. Three constituted a quorum of the committee.

Cross-examined by Mr. Emmons:

I generally met with the executive committee. I did not have much to do about the affairs and business of the company; our business
578 was chiefly looking over accounts. Mr. Goodrich generally had the papers prepared, and we presumed they were all right. Mr. Brown and myself lived by there, and attended pretty regularly. We held meetings two or three times a week, and sometimes once a day, when there were many accounts. I think there were five in the committee. I don't know how nor where it was provided that three made a quorum. I generally attended the meetings of the committee. I sometimes missed, but not often. It would seem probable, therefore, that I must have been there when this contract was made, but I don't remember anything about it. I remember we allowed accounts for making fence and grading. I do not remember the prices we paid, the amounts, or any of them; or the contractors' names, or any of them. I remember the accounts, because we were in the habit of allowing such accounts. It is possible I may have been there when this contract was made, but it does not seem to me that in so large a matter I would be likely to remember it. I think I have talked with Mr. Chamberlain about the tunnel, and road leading to it. I think I recollect talking with him about the old plan of cutting through the hill. It now seems to me that this must have been after the contract was let. I don't know when the tunnel was agreed upon. I do not remember being present when the tunnel was agreed upon. I think the coversation was at the office where we held our meetings. I do remember talking at the same time about the depth of snow through the country; about the board fences, &c., and I think it must have been in cold weather. I do not remember being present when the original contract was made. I have not now a good memory about business matters. I regret very much that it is so poor.

Re-examined:

My age will be seventy years next January.

GARRET VHIT.

Lockwood L. Doty being duly sworn on the part of the complainant says:

I am secretary of the La Crosse Railroad Company, and have been since the first of May last. I have the custody of the records of the executive committee.

It is my impression that there is a package of papers indorsed "Minutes of the executive committee," in the drawer where the rough minutes of the board are kept. They are in Mr. Whaling's handwriting, and I presume have been copied into the book. There is no other book of record of the committee's proceedings subsequent to 17th April, 1857, than this one, that I know of. It was the custom to keep the minutes of the board on loose paper and copy them afterwards into the record book.

LOCKWOOD L. DOTY.

579 DISTRICT OF WISCONSIN, *ss:*

I, Winfield Smith, one of the commissioners and masters of this court, do certify that the foregoing depositions were taken by me by the consent and in presence of the counsel for the respective parties, as appears in the caption and body of the said depositions. That the witnesses were by me first duly sworn that the evidence they should give in this cause should be the truth, the whole truth, and nothing but the truth, and their answers so taken on oath were by me reduced to writing, and then carefully read over to the said witnesses, who severally subscribed the same. That the paper marked "A," attached to the said deposition, is the same referred to in the deposition of the witness Charles D. Nash, dated 28th July, 1858.

WINFIELD SMITH,
Commissioner, &c.

District court of the United States for the district of Wisconsin.

NEWCOMB CLEVELAND
v.
THE LA CROSSE AND MILWAUKEE RAILROAD CO., &c.

Further depositions taken on the part of the complainant before Winfield Smith, one of the masters and commissioners of this court, pursuant to a stipulation filed in this cause.

THURSDAY, 26*th August* 1858.

The examination of the complainant's witnesses having been adjourned by consent of the counsel for the respective parties to this day at nine o'clock, at my office, in the city of Milwaukee in the said district, at this time and place appear Mr. Brown, of counsel for the complainant, Mr. McGregor, of counsel for the said La Crosse and Milwaukee Railroad Company, and Mr. Vandyke, of counsel for the defendant, Selah Chamberlain. Mr. Vandyke objects to proceeding with the examination, requests an adjournment of the same, and declines to appear in such examination, because he says that he is informed that Mr. Lynde, the solicitor of record for Mr. Cleveland, the complainant, has made an agreement with Mr. Emmons that no testimony should be taken in the absence of Mr. Emmons, who is now absent from the city. That Mr. Emmons alone is familiar with the case and the matters of the defendant Chamberlain, and has left the city upon the agreement that this examination should not go on during his absence. Mr. Vandyke also states that he informed the defendant Chamberlain of such arrangement, and upon the faith of such information the defendant Chamberlain has also left this, and is now absent.

589 Major J. Thomas, a witness produced and sworn upon the part of the complainant, says:

I had in my hands, as marshal of this district, an execution on the judgment in favor of Selah Chamberlain against the La Crosse and

Milwaukee Railroad Company. My deputy seized on that execution a large amount of iron. I suppose Mr. Reed has it in his custody, but I don't know. He has transacted all the business as my deputy. That is Mr. Duncan C. Reed. He also made a levy on iron on a judgment in favor of Mr. Cleveland against the same company.

I had no agreement or understanding with Mr. Chamberlain that he or the La Crosse road might take the iron. I left the matter entirely with Mr. Reed. I told him he had better not let the iron go. That is all I know about it. I have no agreement, bond of indemnity, or writing in regard to the iron. I do not know that my deputy has any. I do not know whether the iron is now in his custody. It is not in mine individually, although perhaps in my official custody. Reed made the levy on both executions. I think he is not now in town.

M. J. THOMAS.

Lockwood L. Doty, being duly sworn on the part of the complainant, deposes and says:

Question. Have you the minutes of the proceedings of the board of directors of the La Crosse Railroad Company?

The witness declines answering, because he states that he understands that the examination was not to proceed at this time, but was, by consent of counsel, to be adjourned; that having that understanding, he informed Mr. Chamberlain, who communicated the intelligence of such adjournment to him, that he, the witness, felt it his duty to attend, as Mr. Palmer had agreed that he should do so; that he was unwilling to bring the books, because Mr. Emmons might be absent, and Mr. McGregor, the attorney of the company, was then out of town. The witness had called at the office of Mr. Ryan, counsel for the company, who was not in, and the witness was not sure that the counsel for the company would be present at the hearing, and the witness did not wish to produce the minutes except in presence of the counsel for the company, in order that he might be instructed as to his rights and his duty to the company in regard to producing the minutes. There was no understanding between the witness and Mr. Chamberlain in regard to the witness's not testifying; but the witness told Mr. Chamberlain that he would not bring the minutes unless Mr. McGregor or Mr. Ryan should be present.

Mr. McGregor, attorney for the defendant, the La Crosse and Milwaukee Railroad Company, and Mr. Ryan, of counsel, are present, and state that they are ready to proceed with the examination of the witnesses.

Upon request of the counsel for the complainants, the examination is suspended until Monday, the 6th September, 1858, at 2 p. m.

581 MONDAY, *6th September*, 1858.

The counsel for the complainant and the counsel for the defendant Chamberlain, and the counsel for the defendant, the La Crosse and Milwaukee Railroad Company, being present—

Duncan C. Reed, a witness produced and sworn for the complainant, says:

I am a deputy marshal, and have been since June, 1857. As such deputy I levied on a quantity of railroad iron, on an execution in favor of Selah Chamberlain against the La Crosse and Milwaukee Railroad Company.

Question. When did you make that levy?

(Objected to, 1st, as irrelevant and immaterial; 2d, because the officer's return to the execution is the best evidence.)

Answer. My impression is that it was in the last of September, 1857; it may have been in the first days of October. That execution issued out of the United States district court.

My impression is that that execution was for $629,000 and some hundred dollars. I levied on about 42,612 bars here in the city, and about 2,000 bars the other side of Wisconsin river. I subsequently levied on the same iron on an execution in favor of the complainant in this suit against the La Crosse and Milwaukee Railroad Company. The iron has been advertised for sale from time to time under both levies. I suppose the iron is on the bed of the La Crosse and Milwaukee railroad, laid down on the track. I do not know who took it away, nor by whose directions. It was taken without my knowledge or consent. I had the custody of it. I don't know who was doing the work on that part of the road on which this iron was laid down. The iron was moved on the cars, which, I suppose, belong to the La Crosse and Milwaukee railroad. I think I have had no conversation in regard to the removal of that iron, either with Mr. Chamberlain or any of his counsel. I do not know that the iron was removed by Mr. Chamberlain or by his direction. I was advised, before it was all taken away, that it was being removed. I went there and stopped the men who were removing it on to the cars. They were laborers, who would not tell their names, nor by whose authority they were at work there. They went off. I believe the whole of that iron has been since taken away, and laid on the La Crosse road. I have no bond of indemnity, or agreement or writing in regard to the taking away of the iron. I seized the iron, and it was in my custody as marshal under those writs. It was taken away secretly, without my knowledge or assent. I had some conversation in the street with Mr. Goodrich. I do not remember what he did say. He assured me that the iron then loaded up should not go with his consent; that matters should remain as they then were.

582 Mr. Thomas never told me to let it go, or anything to that effect, nor that I need not do anything more on the execution, nor anything of that kind. He told me that as Mr. Cleveland was urging me to keep men there to watch it, that if Mr. Cleveland would give him a bond of indemnity and money to pay

men with, he would do so. I think I did not see Mr. Cleveland after that time until the iron was all removed. The reason why he told me so was that I wanted to know what course I should take about it. He gave me to understand that I was the one who had levied on it, and must get indemnified; that there was risk of being liable whether I held it or let it go, and that I must get indemnified in either case; that I could hold it under the levy as well after it was laid on the track as before. I do not know whether this conversation was before or after the conversation with Mr. Goodrich. I never had but that one conversation with Mr. Goodrich or any person connected with Chamberlain. I was often at the depot. Sometimes they were loading up the iron, sometimes not. Mr. Thomas never told me anything about the persons removing it having any claim or right to it. They did not tell me anything of the kind. They did not say anything. They would not talk at all. I could not get anything out of them. I do not know of any bond of indemnity given to the marshal or to any person, nor of any agreement in relation to removing the iron. The collector notified us that he held the iron. Mr. Ryan also notified us that he had a claim on the iron, and that we could not sell it. I do not know whether the iron west of the Wisconsin river (in Kilbourn City) was removed or not. All of my testimony applies to all the iron levied upon in this city, being over 42,000 bars.

(All the foregoing testimony is taken subject to the objection of the defendant Chamberlain.)

Mr. Thomas did not tell me that Mr. Ryan had informed him that the iron was being taken away, and notified him to prevent it.

(The defendant Chamberlain objects to all of the testimony given by this witness before taken, on the ground that it is irrelevant and immaterial to any issue in the case, inadmissible under the pleadings, and is secondary evidence.)

D. C. REED.

Lockwook L. Doty being duly sworn for the complainant, says:

I have certain copies here which have been compared by me with the records of the proceedings of the directors of the La Crosse and Milwaukee Railroad Company, from which they were taken. They are true copies of portions of these records. They are complete copies of the resolutions. They are numbered 1, 2, 3, 4, 5, and 6. Copies referred to are marked B 1, B 2, B 3, B 5, and B 6, and are hereto annexed. And it is agreed by counsel that these copies may be used in evidence in the same manner that the originals might have been used, if produced here or on the hearing of this cause.

LOCKWOOD L. DOTY.

583 Edward P. Whaling, recalled for the complainants, says:

I was appointed secretary pro tem. at different times after April 17, 1857. I acted as such and took the minutes of the executive committee of the board of directors of the L. C. & M. R. R. Co. after that date at different times. I signed the minutes as secretary pro tem.

During the time that I acted as secretary pro tem. the proceedings of the executive committee were, I believe, correctly recorded by me. I intended the minutes to be correct. I was occasionally called on to act as secretary pro tem. at the meetings of the board of directors. I acted as secretary pro tem. up to September 7th, 1857, and perhaps afterwards. Mr. Hadley was secretary. I don't think he acted as such in keeping minutes of the meetings of the executive committee before September 7, 1857. He might have done so afterwards. There were also meetings held east, which I did not attend.

Cross-examined by Mr. Palmer, of counsel for Mr. Chamberlain:

I was never secretary of the company; there was no such officer as secretary of the executive committee. Jackson Hadley was secretary of the company from April 17, 1857, up to and after the last meeting of the executive committee which I attended. Whether he attended the meetings of the executive committee or any of them, and took the minutes, I do not know. There were meetings of the committee which I did not attend. I copied minutes prepared by others than myself, but whether any of them were in Mr. Hadley's handwriting I do not now recollect. I will not say that I attended all the meetings of the executive committee from 17th of April to the 7th of September, 1857. I do not know whether or not there were meetings held during that time which I did not attend. Many of the resolutions of the executive committee were on slips of paper and copied into the records. I remember that the minutes of one meeting were on a slip of paper laid aside, and not written upon the book for two or three days. I do not remember that the proceedings of the committee during that summer were kept on slips of paper, and then copied into the book. There might have been meetings when the proceedings were so kept; I do not recollect. There might have been a dozen, but I think not. The proceedings of all the meetings held at the east were kept in that way, and subsequently copied into the book. I do know whether all the proceedings of the executive committee during that summer are contained in the record book. So far as I know they are. They might have been handed to me on slips of paper for record, and been lost by me. They might have been left in the office for me and lost before I got there. I don't remember of any records being lost. It did occur that other papers were mislaid and not found. I only recollect of having been ap-
584 pointed once secretary pro tem. I do not know of any resolution appointing me, but I was appointed. Afterwards I acted as such without any formal appointment.

EDWARD P. WHALING.

Edward H. Brodhead, being duly sworn for the complainant, says:

I have been for several years past an engineer on railroads, and more or less familiar with the price of railroad iron. I have seen the iron used by the La Crosse and Milwaukee Railroad Company as it lay in piles. I never examined it closely.

Question. On or about the first day of October last what was the value per ton in Milwaukee of such railroad iron?

(Objected to by counsel for the defendant Chamberlain as irrelevant and immaterial.)

Answer. I can hardly speak positively on that subject, not having had occasion to buy any iron within the past two years; but, from the best information I have, I think that iron was worth here then from 60 to 62 dollars a ton. This iron would weigh, I suppose, from 350 to 400 pounds to the bar.

Cross-examined by Mr. Palmer:

That estimate of the value of the iron is for cash; I included the duties. I estimated it free from charge here on the dock ready to be used.

EDWARD H. BRODHEAD.

Edwin H. Goodrich, being recalled for the complainant, says:

I know the La Crosse company had iron last fall in Milwaukee, and also west of the Wisconsin river.

Question. What has become of that iron?

(Objected to by Mr. Palmer as irrelevant and immaterial.)

Answer. It was sent out on the line of the La Crosse and Milwaukee railroad. I don't know that I ever saw any of it laid down on the road. I think I was requested at one time to send it out by Mr. Stanton, at another time by one of the eastern directors of the company; at another time, I think, by Mr. McGregor.

Mr. Chamberlain never told me to send a bar of iron on to the road, to the best of my recollection. Other iron passed over the road besides this of which I have spoken.

No other iron went over the road since the first of October last, that I know of, except that of the Chicago and St. Paul company, which went over the road by directions of that company. This iron of the L. C. and M. road was sent, some of it to Portage City; some to Kilbourn City; some to Linden; some to Manston; some to Tomah; and some to the tunnel; none by me as far as La Crosse. These places are all stations on the La Crosse road this side of the tunnel.

585 It was sent to the track-layers, as they sent word they wanted iron. Mr. Wells sometimes sent word that he wanted it. I do not know in whose employ they were. I do not know whether Mr. Chamberlain laid the track himself, or sub-let the work. I don't know how much of the track had been laid west of Portage City on the first of October last. I could not tell within ten miles, that I know of. I don't know how many miles of the track have been laid, since the 1st of October. The track is now laid through, very nearly to the Mississippi, except the tunnel. It wants less than one mile of being complete from the depot here to the Mississippi. I do not know how much was graded on the first day of October last, beyond the point to which the track was laid. I understand Mr. Chamberlain has had the contract for the construction of the road since the first

of October last. The specific manner in which he has done it, I do not know. Almost all of the iron went on the regular freight trains. No freight was collected upon it, and no one was charged with freight. I had heard, at the time of sending it out, that it had been levied upon by the U. S. marshal, on executions against the company, in favor of Chamberlain and of Cleveland. I had no agreement or arrangement with the marshal, by which it was taken away. Some portion of it was taken away in the night time, not in a secret manner, however. I am unable to say what proportion of it was taken in the night; perhaps one-quarter. It was not taken in the night to prevent it from being seen, but because the men who loaded it were at work during the day in other places, and worked two or three hours in the night. I never, to my recollection, told the marshal that I would not take any iron away. I do not recollect his having ever notified me that I must not take away any.

(The foregoing testimony, in regard to the railroad iron, is taken subject to the objection of Mr. Palmer, counsel for Mr. Chamberlain, that it is irrelevant, impertinent, and inadmissible in the case.)

The bars were from 12 to 21 feet in length. But a small part of it was 12 feet in length. I can't tell what proportion. Some was 14, a good many 15, and some 17 feet in length. I can't tell how much was 12-foot iron.

Question. Have you ever owned, or been interested in, by purchase or otherwise, any of the bonds or other securities which Mr. Chamberlain has ever received from the railroad company?

Answer. Not to my knowledge.

Question. Why did you not answer this question when it was formerly put to you?

(Objected to by Mr. Palmer, as irrelevant and impertinent.)

Answer. The question covered so much ground, that I was not prepared to answer it at that time.

Question. Do you not now know whether or not you have ever been interested in any such securities?

Answer. I do not.

586 Question. Have you actually delivered to Mr. Chamberlain, or to his agent, and to what agent, all bonds, securities, or evidence of indebtedness, issued to him by the company?

Answer. I have delivered them all to him personally, according to the best of my recollection and belief.

Question. Have you ever received, directly or indirectly, any of the proceeds or results of any such bond, security, or other evidence of debt?

Answer. Not to my knowledge.

Question. Do you not know whether you have or not?

Answer. I do not. I don't know what he may have owned during his life.

Question. Have you ever received any money which constituted part of any payment made by the company to Mr. Chamberlain?

Answer. Not to my knowledge. I do not know whether I have or not.

Question. Have ever had any contract, agreement, or understanding with Mr. Chamberlain, or with any one for him, by which you were to acquire, or did acquire, either by way of purchase or otherwise, any interest in any bond, security, or other evidence of indebtedness issued by the company to Mr. Chamberlain, or in the proceeds of any such bond, security, or other evidence of indebtedness, or in any money coming to Chamberlain under his contract with the company?

Answer. Not to my recollection.

Question. Do you not know whether you did or not?

Answer. I have no recollection of anything of the kind.

Question. Did you have any such arrangement, agreement, or understanding with Mr. Wells, who is connected with Mr. Chamberlain?

Answer. I make the same answer, not to my recollection. I understood the other question to include this.

Question. Do you know whether any, and if so, what proportion of the bonds issued by the company to Mr. Chamberlain have been sold by him?

(Objected to by Mr. Palmer as immaterial.)

Answer. I understand that he has sold some portion of his bonds, but what proportion I do not know.

Question. Do you know the person by or through whom the portion so sold have been negotiated?

Answer. I understand that Meigs & Greenleaf have sold a portion of them. I do not know of any other person having sold any.

Question. Have any of those bonds, securities, or evidences of indebtedness, ever been delivered to any other person than Mr. Chamberlain by or through you, or at your request?

Answer. Not that I recollect.

587 Question. Has any other person than Mr. Chamberlain, by or through you, or at your request, or through your influence, received any of such bonds or securities, or any of the proceeds thereof?

Answer. Not to my recollection. I cannot recollect that they did or did not.

Question. Since the last time that you were examined and refused to answer a question, what means have you taken, or what course of investigation have you pursued to satisfy yourself what answer you ought to make to the question?

(Objected to by Mr. Palmer as.)

Answer. I don't know that I have taken any particular course of investigation, or consulted with any person about it, that I recollect.

Question. When, how, or why did you make up your mind to answer the question which you before refused to answer?

Answer. I do not know when, nor how, nor why.

Question. Have you ever had in your hands, since the date of their issue, any bond, note, or other security issued by the company to Mr. Chamberlain?

Answer. Not to my recollection. I do not know whether I have or not.

Cross-examined by Mr. Palmer:

Mr. Reed once spoke to me about not sending out iron. That iron which he spoke to me about was then loaded; it was the iron of the Chicago, St. Paul, and Fond du Lac company. The reason for loading iron in the night time was that the men who loaded it preferred to do the work in the night as extra work, in addition to the work done by them during the day. None was sent out during the night that I know of; some was set out at four o'clock in the morning. That was about six weeks ago, I think. That was a part of a pile of eighteen hundred bars. That pile was, I suppose, a part of the iron levied upon. That was the iron which Mr. McGregor, who is one of the directors of the company, spoke to me about. He said I had better hurry it along.

EDWIN H. GOODRICH.

MONDAY, 8*th September*, 1858.

Lockwood L. Doty, recalled for the complainant, testifies:

I was asked for copies of the estimates on the western division of the road up to October 1, 1857, and also for estimates up to October 1, 1857, for from Beaver Dam to Portage; also for estimates of piling, &c. in Fox lake. I furnished copies of the monthly estimates of the chief engineer, marked C 1 to C 5, inclusive; and C 7 to C 14, both inclusive; C 6 being wanting. They are dated from March 1 to September 1, 1857, respectively. Also final estimates marked C 15, C 16, C 17, dated 1st October, 1857. In regard to estimate No. 6, I find there is an estimate made by the chief engineer, May 1, 1857, for the construction of the road between Beaver
588 Dam and Portage City, amounting to $4,768 65, which although made to Selah Chamberlain, is allowed by the executive committee, as appears by the proceedings of their meeting of May 4, 1857, to Chamberlain & Alden, and which amount has been credited to Chamberlain & Alden on the books of the company. I presume this estimate was erroneously made to Selah Chamberlain, and should have been made to Chamberlain & Alden, to whom it was credited. I have marked upon each of these estimates the date upon which it was accepted by the executive committee; I except the final estimate. There are no others made prior to the first day of October, 1857, that I know of, than those above mentioned. The papers which I now produce, marked C 1, C 2, C 3, C 4, C 5, C 7, C 8, C 9, C 10, C 11, C 12, C 13, C 14, are all the estimates which appear to have been made prior to the first day of October, 1857.

Cross-examined by Mr. Palmer, counsel for the defendant Chamberlain:

I think the papers furnished by me and hereto annexed are copies of all the estimates made previous to the 1st October. They do not include an estimate marked C 6, dated 1st May, 1857, made to S. Chamberlain for work on pile bridge near Fox lake, amounting to $4,768 65, mentioned by me before. I believe that they do not

include any estimate for any work done during the month of September, 1857. I found on the files of estimates, three estimates dated 1st October, 1857, purporting to be for work done during September, 1857.

(The complainant's counsel objects to any testimony as to estimates made on or after 1st October, 1857. No such estimates having been called for or offered by him, and such testimony not being legitimate.)

Cross-examination:

These papers, marked C 15, C. 16, C 17, are copies of those three estimates, being the same hereto annexed. I found amounts in favor of S. Chamberlain against the company, allowed by the executive committee, for work done and materials furnished; also for cars which are not included in these estimates. I have no copies or memoranda of these accounts. The estimates which I have presented here on the request of the complainant's cocnsel do not exhibit the whole of Mr. Chamberlain's claim against the company, as appear by the books of the company.

(Objected to by complainant's counsel, who object to any testimony as to any estimates not offered in evidence by themselves.)

Question. If you should make up an amount between Selah Chamberlain and the company, in which you should credit him only with the amounts of the monthly estimates offered here in evidence by the complainant's counsel, not including the last three estimates
589 nor the bills allowed to him, and then charge him with the payments made to him by the company, would that be anything like a correct statement of the accounts between the parties?

(Objected to by complainant's counsel for reasons hereinbefore stated, and hereafter stated.)

Answer. I should think not.

LOCKWOOD L. DOTY.

The complainants object to all testimony as to estimates made on the 1st October, and subsequently:

1st. Because such estimates are not testimony in themselves, being mere hearsay.

2d. Because they are not included in the stipulation.

3d. Because they have not been called for by the complainant, nor has the complainant questioned the witness respecting them.

The complainants also object to all testimony as to books and accounts between Chamberlain and the company, not called for by the complainant:

1st. Because it is not proper cross-examination.

2d. Because it is not called for by the stipulation.

3d. Because it is but secondary, the books themselves being the only evidence of the account.

The foregoing evidence and the papers hereafter named, offered on the part of the defendant Chamberlain, are taken subject to the fore-

going objections. The complainant's counsel offer in evidence, pursuant to a stipulation hereto annexed, the papers marked B; also those marked C 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, and 14, all of which are annexed to the depositions taken on the part of the complainant. The counsel for the defendant, Selah Chamberlain, offers in evidence, subject to the objections above stated, the papers hereto annexed, and marked C 6, C 15, C 16, C 17.

District court of the United States for the district of Wisconsin, in equity.

NEWCOMB CLEVELAND
v.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Selah Chamberlain, and others.

Depositions taken on behalf of the defendant, Selah Chamberlain, before Winfield Smith, one of the masters and commissioners of this court.

THURSDAY, 30*th September*, 1858.

On this day appeared Mr. Lynde, of counsel for the complainant; Mr. Emmons, of counsel for the defendant, Selah Chamberlain.

590 Charles S. Gregg, being duly sworn, says:

I reside at La Crosse. In December, 1857, I resided in Greenfield, Monroe county, at the tunnel on the La Crosse road. I was there when Mr. Cleveland came up there with Mr. Marshal and Mr. Edgerton to examine the work. I was then in the employ of Mr. Chamberlain. They did not stop there to make much examination of the work. I do not think they went west of the ridge at all. The way I know it is, that snow had fallen that night, and I followed their tracks up on to the ridge, but there were no tracks going west of it. They arrived there quite late in the night. We had breakfast about half-past seven. They went out about eight o'clock, and soon came back. They returned this way about ten. They came there again about the fifteenth of the month, getting there in the night. The next day was very cold, and I do not think they did any work at all. Mr. Marshall told me in presence of another man that if he made an estimate that would be within ten thousand yards of the truth, he would think he was doing well.

Cross-examined by Mr. Lynde:

I was then taking care of the property at the ridge for Mr. Chamberlain. There were no men working there in the winter time. I was not there while any men were working there. Mr. Frazier was in charge of a gang of men there before that time. I don't know how many men were at work there at a time. I could not state how much a man could take out a day. I do not know how much sand work there was. I should think a man could take out twenty-five yards of sand a day there. The surface was sand. There was considerable rock; the most of it was rock. I should think you could

not pick it; you would have to blast. Mr. Edgerton was not there with Cleveland the second time. Mr. Marshall was there. Another young man was there, whose name I don't recollect. I did not know Mr. Edgerton before I saw him the first time. He is rather a tall man, not thickset. The first time he was there I followed them over the ridge, and walked back with them. Mr. Marshall made the remark about the estimate the second time he was there. He said he took the marks on the original stakes opposite the original stations to calculate from. Mr. Cleveland was there with Marshall the second time, and a young man, a chain-bearer. There were three each time. I think Mr. Peverly was not there either time. The second time they came after dark, and left next day about ten in the morning. They stopped at Mr. Lockwood's where I boarded. Mr. Cleveland was about there all the time. Mr. Marshall spoke to me about Mr. Peverly, his partner in the city, and gave me his card. I am confiden I should have known if Mr. Peverly had been there, or if Mr. Edgerton had come there the second time Mr. Cleveland came. I don't know of Mr. Sill's making any survey that fall or winter. I don't know that he made any at any time. I should have seen
591 him, I think, if he had made any survey that fall or winter. I went away in the middle of January. I am now in Mr. Chamberlain's employ as foreman in charge of a general train.

C. S. GREGG.

Thomas Daniel, being duly sworn, says:

I am a civil engineer. My residence is near Columbus, Ohio. I have been an engineer since about 1840. I have been engaged in railroad engineering since that time. I was over the line of the La Crosse railroad beyond Portage. I was engaged as an engineer on that road from March, 1857, to March, 1858. I am now employed on the St. Croix and Superior road. I know of no way in which the amount of work done on a railroad, whether complete or incomplete, can be ascertained with accuracy without access to the original surveys, or to the the field-notes of the work as it progressed. To make a remeasurement of the work, you would have first to cross-section the entire work as often as might be necessary from the character of the work. Where there was rock work, you would have to cross-section the rock and the earth separately. This is in the absence of the field notes. You would, of course, have to guess in some measures at the original surface of the ground, because the embankment would cover it up, and it would be cut away by the excavations. You could not very well classify the work. You could not at best make, without the original surveys, an estimate which would be entirely accurate, even with all facilities. I know the general character of the work from Portage to the tunnel.

Question. Suppose the work done complete from Portage to Kilbourn City, and all, or nearly, done ready for the track from there to New Lisbon, and four or five miles of road done east of the tunnel, embracing a distance of about sixty-five miles, how accurately

could two engineers, without the aid of any field-notes, survey that, and estimate the quantity of work done, in the space of four days?

(Objected to by Mr. Lynde.)

Answer. That would depend on how near they could guess at it. They could do nothing more than guess at it in that time. An engineer cannot measure side-hill cuts without the original surveys with any degree of accuracy at all. The same is true on level ground which is wet and marshy, so that the embankment would sink. I have seen this contract of Mr. Chamberlain's, under which he did the work west of Portage, the one made in January, 1857.

Question. How does it dompare generally, as to prices, with other contracts that you know of being let in 1856 and 1857?

(Objected to by Mr. Lynde.)

Answer. It does not vary much from several that I know, in Ohio. The contract of the Cleveland, Columbus, and Cincinnati road, on which I was engaged, the grading, to complete the road ready for the track, amounted to about thirteen thousand dollars per
592 mile. There is some little rock on that road, but not on the southern part, of which I had the charge. The work is of a lighter character than on the La Crosse road. Labor and materials were then lower there than in Wisconsin in 1857. Part of the time labor there was as low as sixty cents per day. That price ($13,000) does not include chairs and spike. The Columbus and Xenia road cost about the same. It was built about the same time, and prices were about the same. I have been in Wisconsin since about a year ago last March. I have known Mr. Chamberlain by reputation, I think, seven or eight years; he has been an extensive contractor on railroad and other public works.

Question. What has been his reputation as a contractor, as regards ability, means, and promptitude?

(Objected to as irrelevant and immaterial.)

It has been good, as far as I have known.

Cross-examined by Mr. Lynde:

I was a division engineer on the La Crosse road; mine was the northwest division, from Portage City to St. Croix river or lake. I was not engaged on the line which was located. The lines that I ran were north of the La Crosse road as now constructed. I left the La Crosse road at Portage, and made no surveys on the present completed line of the road. I have been over portions of the present line various times, and have been near it often. I walked from the tunnel to near Manston last fall, about the last of November or first of December. It was for the purpose of coming to Milwaukee. The track was not laid at that time. There was some material then on the bed of the road that would answer well for ballasting. It is difficult for me to tell the character of the work at the tunnel; there is a great difference in that rock, before it is exposed to the air and afterwards. There are many kinds of rock which do not change on exposure to the atmosphere. That rock is sand-rock, which is hard in its natural position, but falls to pieces on blasting.

My object in going over the road was not to see it any more than curiosity prompted me, but to get the best walking. I could not say what proportion of the work at the tunnel and approaches was rock. I could not say whether there was then any difficulty in ascertaining the character of the work: there would be at this time great difficulty. In classifying work after it is done, you are very apt to be unjust to the contractor. You cannot classify it before it is done; the time to do it is as the work progresses. The original field-notes would not aid you to classify the work; the field-notes taken during its progress would aid you.

The Ohio contracts I mention were let about 1849. I have no copies of them here. I have a copy of one of them at home. The
593 contract on the Cleveland, Columbus, and Cincinnati road, between Cleveland and Columbus, was let to Messrs. Harvey, Stone, and Witt. The contract was for so much a mile, and the cost did not depend on the amount of work done. I cannot state the average amount of work per mile. I am thirty-three years of age. I have been railroading ever since I was fifteen years old. The reasonableness of the price of the tunnel approaches, at two dollars per yard, would depend on the amount of rock. I have known rock let as high as seven dollars per yard. I have never known such rock as this let at seven. I never saw any just like this before. I never knew of earth being let at two dollars per yard, except when covered with water. I suppose it would cost from six to ten cents per yard to take out the sand from the tunnel approaches, depending upon the length of the haul. I do not know that I ever knew of work like the tunnel work being let at five dollars per yard. I have known tunnel work let at a higher price than that for granite rock. There is more risk about the work than about hard rock. If I had had Mr. Chamberlain's first contract, I should not have wanted to change it for a price very much less than that. Not that I think the contract was very good, but I have a dislike to tunnel work. Under his first contract, the work was to be divided into three sections, I believe, of about thirty-six miles each. I don't know anything about it, but I should think, as a mere guess, that cutting through the ridge would have brought the work in that section up to twenty thousands yards per mile.

Question. Was not the price that Mr. Chamberlain got for the tunnel and approaches clear profit, if the whole work in that section, including the thorough cut, did not exceed 20,000 yards per mile?

Answer. I could not answer, for this reason. There is a clause in that contract which lessens the price for material when the quantity falls short, and I do not know enough about the quantities of the work on that section to make an estimate.

I was not acquainted with Mr. Peverly in Ohio. I think Mr. Stoughton was the division engineer in charge of the division between Portage City and the tunnel. I am not now in Mr. Chamberlain's employ.

Question. Is it not just as easy to get at the amount of excavation on a side-hill cut, where the surface is even, as it is on the level ground?

Can it not be ascertained with the same accuracy? I mean after the work is done.

Answer. It might be, if you could be sure that the surface had been even. You could only know that from the field-notes. You can get the contents of any figure, when you have the length, breadth, and thickness.

THOS. DANIEL.

Dow J. Whitmore, being duly sworn, says:

I am a civil engineer; I have been upon railroads since
594 1845. Prior to that I was doing nothing but surveying, since I was able to do anything. I am at present engaged on the Southern Minnesota railroad, as chief engineer. It is impossible to make a correct estimate of the amount of work done, by observations made afterwards, unless you have the original field-notes. It is impossible to classify work unless you have the notes made during the progress of the work. Accurate measurements are (or should be) taken before work is commenced, showing the contour of the ground before it is disturbed. A person measuring after work is done, without the original data, must assume that the surface was plane, or guesses at what it might have been from one side of the cut to the other, which assumption or conjecture would be likely to lead him into great errors, particularly in heavy work. My knowledge of the material through which a great portion of the La Crosse road runs is such that I should be loth to attempt to classify the work done after it had been exposed for any length of time. The hard materials become covered over with the soft materials which are washed down over them, and the only way to ascertain the nature of the material is to dig into the slopes. I have been employed on the La Crosse road since 1853 until the summer of 1857, between here and Beaver Dam. The first time I was over the road west of Portage City was in March last. I took the cars at New Lisbon. Two engineers with an assistant might take as much time as they please, and they could not by measurement ascertain the amount of work done on the La Crosse road, between Portage and the tunnel, without any prior surveys. They might make an approximate estimate. They might, without the previous data, survey and measure the work so as to make an approximate estimate, at the rate of three to four miles a day. But even then they would be liable to gross errors.

I read this morning the copy of Mr. Chamberlain's contract for the construction of the western division of the La Crosse road, made on the 20th of January, 1857, which is in the printed volume of the investigating committee's report. I read that addition which relates to the tunnel. I have been in Wisconsin and Minnesota about five years.

Question. How does that contract compare as to prices with other contracts which you know have been made in Wisconsin, Iowa, or Minnesota, in 1856 and 1857 and 1858?

(Objected to by Mr. Lynde as irrelevant and immaterial.)

Answer. I am acquainted with two contracts make by the La

Crosse company with Jackson and McLaughlin and with Newcomb Cleveland. In the former, the limits of quantities and the prices were less than in Mr. Chamberlain's.

But the profits, the pro rata profits, were greater in Jackson and McLaughlin's contracts than in Mr. Chamberlain's.

The percentage of profit would be greater, I should think. That was the first division between Madison and Portage.

595 The contract was let about the same time that Mr. Chamberlain's contract was let. I saw the tunnel, immediately after they had got the approach done on the west side, and had commenced the tunnelling.

Mr. Chamberlain was to receive, I believe, five dollars a yard for excavation in the tunnel, and two dollars a yard in the approaches, and twenty-five cents a foot for timber.

Question. Taking into account the state of the country, the appearance of the work as it then was, and all other circumstances as they then existed, how, in your opinion, did the prices of the timber work in Mr. Chamberlain's contract compare with those in other contracts for the same kind of work let by other companies, if you know of any other?

(Objected to by Mr. Lynde as irrelevant and inadmissible.)

Answer. I can hardly think of a case similar to that. Contrasting other works that I know of with that, I should feel loth to make any change in the prices or amounts. Tunnels are frequently made through sharp points or into bluffs, where you can see beforehand the material in which you are going to work. Most of the Ohio tunnels are of this kind. But in this case the approaches are long, and you cannot know beforehand the character of the work to be done. There is nothing on the surface to indicate the nature of the material that you are to work.

If the material had been such that the arching had to be carried along as fast as the excavation, the price named in the contract would not have paid the contractor. My reason for this opinion is, that I know an instance of that kind. A tunnel on the Central Ohio road was let at three dollars and a half a yard; after entering it, the roof, on exposure to the atmosphere, began to crumble, and it was necessary to arch it. The contractor failed. They increased his price to four dollars a yard; he worked on, and got a hole through the tunnel and the bottom out, and then failed again. The company then took hold, and only suspended work when they failed. Owing to the difficulty of getting hands to work in the worst portion of the tunnel, they were unable to complete it, and the tunnel fell in, until the top of the ridge (150 feet above) fell in. I mention this to show the risk. Some tunnels are much more favorable. There is always, in tunnel work, a great uncertainty as to what the work will be, and the contractor has to run a risk, unless he provides against it in his contract.

Cross-examined by Mr. Lynde:

I am not aware that any of the directors of the company were in-

terested in the Jackson & McLaughlin contract. I do not know that Jackson & McLaughlin gave anything for that contract.

I mean by what I said about the comparative profits of Jackson & McLaughlin's and Chamberlain's contracts, that considering the actual amount of work to be done at the prices named in each
596 contract, there would be a greater profit, in proportion to the money expended, in Jackson & McLaughlin's contract than in Mr. Chamberlain's.

Their contract was from Madison to Portage. I don't know how they were to be paid, but I think in cash, or partly in cash. The limit of quantities in the Madison and Portage road was twelve thousand yards per mile through the whole line. That contract included also the road from Columbus to Midland. I never made a survey on that portion of the road embraced in Mr. Chamberlain's contract; I have been over it several times. I think there is scarcely any hard-pan between Beaver Dam and Rock river. I know nothing of the character of the hard-pan west of Portage; I do not know that there is any hard-pan west of Portage. In this State hard-pan is more like gravel and clay cemented, bluish clay, with small limestone and small round-stone in it, very compact and very dry; there are various grades of hardness; sometimes you can hardly drill it; you can trace it until you can hardly distinguish it from clay. On the La Crosse road, we have met it with loose, running sand directly over it; it was in a bed parallel to the surface of the ground, where there was no external indication of it; sometimes the upper surface of it was parallel to the surface of the ground, sometimes not; sometimes it appears on one side of the track and loses itself before it reaches the other side of the track. If you should go into an excavation, by shovelling into the slope beyond the reach of the weather, you could tell where the hard-pan had been cut into; but frequently the soft material above the hard-pan will slip down on to it, and coat it entirely.

I have seen the material that came out of the tunnel. It comes out in the form of sand; sometimes in blocks; but then the consistency has been destroyed by the powder. The rock is soft sand-rock, as it comes out. The approaches to this tunnel seemed to me to be of the same material as the tunnel, soft sand-rock; it was frozen at the time, and it was difficult for me to judge how much was rock and how much was earth. I should want, for taking out the approaches to the tunnel, a dollar and a half for the rock, and thirty cents for the common earth; I should want this price for the earth, because I think it was a mere surface covering of the rock, and filled with oak grubs. Some of the earth could have been removed for fifteen cents, and perhaps all. I don't think the rock excavation could have been done for thirty cents; I don't know what it has actually cost. I don't think the arching could have been done for twelve dollars a perch, I would calculate to do that with brick. My reason for that is, that I once got up a bid for a similar work. The shafts to be dug were holes from the top into the tunnel, to assist in the work. I should think the price ($10 per yard) would be enough. The cost increases

rapidly with the depth. I cannot say how much work there was per mile on this section in which the tunnel is. I should have
597 charged more for the tunnel work than five dollars per yard; I should not wish to take the tunnelling alone much less than six dollars a yard. But I am not a contractor; contractors are more risky than I am. As much of the material as I saw, came out of the tunnel in the form of sand; some I understood came out in blocks. When I spoke of six dollars a yard, I mean that I would not, before any work was done there, have taken a contract for less than that price. I would not have known what the material would be, but I should have feared that it would be soft sand-rock, so soft that the arching must follow the heading and the breasting. I should think in that case that there would be doubt about the work being profitable, even at the prices named in the contract; I should want to have prices that would pay me. The difficulty in such a case is to get men to work there. There was quite a large amount of heavy work near Kilbourn City, or about there. There are some heavy cuts between Portage and Kilbourn City. I think there is some steep side-hill work near the Wisconsin river. Then there is the tunnel, which of course is heavy work.

In making my statement in regard to the impossibility of ascertaining the amount of work done, from surveys made after the work is completed, I assumed that there were no cross-section stakes, or rather data to guide the engineers. The stakes, if standing, might mislead them, unless they knew the distance each was from the other. These stakes are at equal distances from each other, except when the nature of the work requires them to be nearer together, and then theyare so put. If an engineer does not know the distances and position of the stakes he would be confused by them. If an engineer knew the positions of the cross-section strikes, they would measure mile a day more in making an approximate estimate than what I have stated. I think there was no arching done in the tunnel. I have not been in it since it was completed.

I could not from that contract now make an estimate of what price per lineal yard Mr. Chamberlain would have received for the tunnel work, if it had been necessary to make the arch. I could not tell the amount of timber necessary. I could not tell the number of yards of packing over and on the sides of the arch. If it was to be arched with stone I should not know where I could get the stone, and how far I should have to haul it. Those are all the items which I could not ascertain. I will make an estimate such as you desire.

Re-examined by Mr. Emmons:

If Mr. Chamberlain had come on to water or quicksand in the tunnel, it would, of course, added to the expense. I have never known quicksand found in a tunnel. I have known of water troubling contractors very much. In deep cuts quicksand is very common. I knew a cut where the extreme depth was one hundred feet, where they had intended to make a tunnel, but the water troubled
598 them so much, and the nature of the material was such that

they concluded to make a thorough cut, and did so. For any surface indications that appeared, Mr. Chamberlain might have encountered a great many obstacles that would largely increase the expense to him of the work. There was nothing that I know of to indicate whether or not he would meet such obstacles. It was matter of uncertainty. It would depend on how serious the obstacles were; whether five dollars a yard would pay for the work. If there were no obstacles and the men were willing to work, that price would pay well.

D. J. WHITTEMORE.

FRIDAY, 1 *October*, 1858.

On this day appeared Mr. Lynde, of counsel for the complainant, and Mr. Emmons, of counsel for the defendant, Selah Chamberlin.

Dow J. Whittemore recalled.

Cross-examined by Mr. Lynde:

I have made the estimate desired by you as to the cost of the arched tunnel. I call a perch twenty-five cubic feet. The estimate is as follows:

An arched tunnel twenty-two feet high, and twenty-four feet in width in the clear, with a thickness of wall and arch of twenty inches, requires 21 cubic yards excavation per lineal foot, which at $5, is	$105 00
4½ perches brick masonry, per lineal foot, $12	51 00
Cost of lineal foot	156 00
1,330 lineal feet, cost	207,580 00

This is for a double track.

An arched tunnel sixteen feet in width, and twenty-two feet high in the clear, with a thickness of wall and arch of sixteen inches, requires 3 perches brick masonry, per lineal foot at $12	$36 00
14½ cubic yards excavation, per lineal foot, at $5	72 50
Cost of one lineal foot	108 50
1,330 lineal feet cost	144,305 00

This is for a single track.

Re-examined by Mr. Emmons:

I have made an estimate of the number of yards in the cut, if it was a thorough cut, assuming the height of the cutting at each
599 end of the tunnel to be sixty feet, and the highest point intervening to be one hundred and sixty feet. There would then be required to be moved at least seven hundred thousand yards

of material. This is for the length of the present tunnel, 1,330 feet. I do not know that these data are correct. From observations I suppose they are approximately correct. A person in judging of so large an amount of work might easily be mistaken. I speak of the dimensions of the cut, of which I have no knowledge except from the information derived from the engineers.

Cross-examined by Mr. Lynde:

If the height of the ridge to be cut through was one foot less than I have assumed it, the amount of cutting would be considerably less. One foot less depth of cutting would make a difference of about twelve thousand yards of cutting. Ten feet less depth would make a difference of about one hundred fifteen thousand yards of cutting. This is estimating the slope at one to one.

D. J. WHITTEMORE.

Isaac C. Brewer, being duly sworn, says:

I am a civil engineer. I have been engaged as such since 1846. I have been so engaged in Delaware, Pennsylvania, Mississippi, Ohio, and Wisconsin, in railroad engineering. I am now engaged in Minnesota in railroad engineering. I am division engineer.

It is not possible to measure accurately work after it is completed, without access to the field-notes taken before the completion of the work. The degree of accuracy with which it could be done would depend a great deal upon the time spent. A great many things would have to be guessed at, at any rate. It would be impossible either in cuts or fills to find where the original surface was, after the work was done, without the original field-notes. I was employed on the La Crosse road, on the northwest division, not on the line located, but on a line run north of that. I saw the approaches to the tunnel after the ground was broken, but before it was finished. There was a depression on the east side of the hill before reaching it. That ridge might have turned out to be quicksand, or there might have been water there from springs in the hill. Indications of this kind would be taken into account by a contractor bidding for the work, and would of course enhance the price. I was through that part of the country in November, 1857. It was thinly settled, the roads were very bad, and it was a hard country to get through. I was up there in April, 1857, and I know its general features.

Cross-examined by Mr. Lynde:

The east approach crossed a depression before reaching the main hill. I think the greater part of that depression is filled on the south side of the tunnel at least. That depression may have made the excavation a little less at that point. That depression would hardly show now. There was a small ravine or gulley there, which was crossed by the tunnel approach. There is a difficulty in ascertaining the amount of cutting and filling, besides the difficulty of ascertaining the original surface. There may be sinking spots. The amount of work in a cut can be measured if you know

the original surface. In filling, you can ascertain the amount of work done if you have the original surface, and there is no sinking, or if you can measure the pit where the material comes from for the embankment. Then you would have to know the natural surface of the earth where the pit was. If there is a sinking spot, you cannot guess how much earth goes in there, unless you have some such data.

Re-examined by Mr. Emmons:

I have known Mr. Chamberlain by reputation for four or five years. I think he has been very extensively engaged in the construction of public works in Ohio, Vermont, and Pennsylvania.

Question. What has been Mr. Chamberlain's reputation as a contractor, for ability, means, and promptness?

(Objected to as irrelevant.)

Answer. It has been good.

ISAAC C. BREWER.

John McLean Staughton, being duly sworn, says:

I am a civil engineer. I have been such since 1849. I have been so employed since February, 1857, on the western division of the La Crosse road between Kilbourn City and La Crosse, in the capacity of division engineer. I know of Mr. Chamberlain's having a contract for the ballasting of the eastern division of the road. The portion of the road which crossed Fox lake, between Beaver Dam and Portage, was included in that contract. There was a very considerable sink there. The work was piled there. It was so wet and soft there that it could not be filled at first without taking an immense quantity of earth. It was so bad that even the piling would not stand, and it became necessary to fill it afterwards.

I have with me a copy of a final estimate under the gravel contract up to the first of October last, for the ballasting between Beaver Dam and Portage.

Question. What do you know about its correctness? Tell all you know about it, and the source of your information.

(Objected to as incomplete.)

Answer. The gravel pits, from which the materials were taken, were measured by different assistants on the road, and cross-sectioned. Those cross-sections were returned to the office and the quantities then calculated. One of the gravel pits I measured
601 myself. I have been over the calculations made of the others by the assistant engineers, and found them to be correct; I have not been over every item in every calculation; I have been over many of them to test them, and satisfy myself that they are correct. I have been over enough of them to test them, and satisfy myself that they are correct. The last item is derived from the number of yards. I could not separate this from the first item. I do not know where they hauled gravel, to what particular mile, or portion of the work.

The chief engineer cannot, of course, go and measure every part of the work. The assistant engineers, in the first place, go out to

the places whence gravel is to be taken, and accurate measure and cross-section the natural surface of the ground. Then they go again at intervals, from month to month, and measure and cross-section the pits, whence the gravel has been taken. From these measurements, calculations are made of the amount of work done, and gravel removed. That is the manner in which these estimates are made up.

This paper (marked A) is the copy which I have mentioned.

(Paper produced, marked A, and offered in evidence in connection with the testimony of the witness.)

(Objected to by Mr. Lynde, as incompetent and secondary evidence, being an estimate in gross, without the data upon which it is made.)

Paper is hereto annexed.

I had charge as division engineer of the work on the La Crosse railroad, from Kilbourn City to La Crosse, performed by Mr. Chamberlain, under his contract with the company.

(Original papers are produced by Mr. Emmons, execution thereof proved, copies thereof are taken, marked respectively B and C, and are attached hereto. They are offered in evidence by the counsel for the defendant Chamberlain, and are objected to by Mr. Lynde, because they are irrelevant and immaterial. The contract paper marked B is offered merely as introductory to the paper marked C. The above objection is made to each paper separately. Paper marked C is offered in aid to the testimony of this witness, and of witnesses hereafter to be examined.)

Counsel for defendant Selah Chamberlain, also produces the certified copy of the final estimate of C. W. Woodward, chief engineer, which is hereto annexed and marked D. The same is objected to by Mr. Lynde as being secondary evidence, in that it is made up of prior estimates which are not produced, and not from actual survey at the time, and that the original estimate would not be evidence unless sworn to. This certified copy, (marked D) is admitted by Mr. Lynde to be a true copy of the original estimate on file in the office of the secretary of the La Crosse and Milwaukee Railroad Company, which is now exhibited here.)

Witness resumes:

602 I know (as far as any division engineer ever informs himself upon such matters) that the amounts of work mentioned in this paper marked D, were actually performed. No division engineer, of course, ever makes all the measurements in person, but relies upon the measurements taken by assistant engineers. The returns were made to me by the assistant engineers, and I am satisfied that they are correct. Upon a portion of the work between Kilbourn City and Portage, I did not see the returns previous to making this estimate, but I examined them afterwards. I also accompanied Mr. Woodward and Mr. Sill, in their remeasurements, and assisted them. Those remeasurements are contained in the paper marked C. In those remeasurements we had the benefit of all the original field-notes, and the returns of the division and assistant engineers. I was then in the employ of the La Crosse and Milwaukee Railroad Com-

pany. There was other assistance besides Mr. Sill, Mr. Woodward, and myself. There was Mr. Howell. We were all in the employ of the company. I don't remember how long Mr. Woodward and Mr. Sill was occupied in that remeasurement. I think several weeks were spent about it in all. I think we make the remeasurements carefully and accurately; so accurately that if there had been any error in former measurements, we should have detected it.

I think we arrive at the correct results very closely. I remember that there was a difference between our remeasurement of the work at one of the tunnel approaches, and the final estimate of the first of October. I think that difference must have arisen in this way: the sand on the sides of the approach had washed down into the cut to some extent, and so when Mr. Sill and Mr. Woodward were there, the cut did not show the full amount of work which had been done. The difference was not material; I don't remember what it was. There was also another difference, which arose in this way: the assistant engineers had not got through with their work, and had not made full returns of the work at the tunnel approaches, when the final estimate was made. We were not aware that there was any necessity for the returns being made by the day, and so they were a little behind, as they frequently were. Mr. Woodward therefore acted on a prior return, instead of one made up to the very day of the final estimate. I commenced work in March, 1857. I made the surveys myself from Kilbourn City to La Crosse. The rock excavation was estimated at a dollar a yard in the final estimate of 1st October, 1857. In the re-estimate, it was estimated at seventy-five cents a yard.

Question. What occasioned that difference in the two estimates?

Answer. It was owing to the fact that the number of yards of earthwork per mile fell short of twenty thousand, in which case, by the contract, twenty-five cents was to be deducted from the price yer yard. The first estimates were based on the supposition founded on the profile, that the earthwork would exceed 20,000 yards per mile.

The haul was made longer than had been originally in-
603 tended. This diminished the amount of earthwork, since the earth from the cuttings was carried to the embankments, instead of being wasted. I am in charge of the work including the tunnel; I had charge of the original surveys myself; I received instructions from the president and chief engineer in March, 1857, to run my lines across the ridge with reference to making a thorough cut. I ran the lines in April, about the middle of April, I think. I had just completed my trial lines over the ridge, and the president, Mr. Kilbourn, and Mr. Woodward, chief engineer, came to the ridge for the purpose of examining the lines which I had run, and of determining which should be adopted. I had understood that a thorough cut had been settled upon, and my efforts had been only to get the most feasible route for a thorough cut. The various lines and profiles were examined by those gentlemen, and estimates were made of the cost of a thorough cut on each of these lines. They were made on

the basis of the prices mentioned in Mr. Chamberlain's contract, as it then existed. So at least I supposed, as they assumed instantly the prices. I did not then know what the prices in Mr. Chamberlain's contract were, and I do not now remember what prices they fixed.

Question. Do you remember anything being said between them at that time, in estimating the cost of the thorough cut, about Mr. Chamberlain's original bid, on which his contract of January, 1857, was let, for tunnel work, and for thorough cut work?

(Objected to by Mr. Lynde as irrelevant and immaterial.)

Answer. I remember that there was a conversation in regard to that. The particulars of the conversation I do not remember.

Question. What was concluded upon between them?

(Objected to on the same ground.)

Answer. They concluded that a thorough cut was out of the question, and that it was necessary to have a tunnel, although Mr. Kilbourn was very strongly opposed to having any tunnel on the road.

Question. To what did Mr. Kilbourn yield? What reason decided them?

(Objected to on the same ground.)

Answer. The comparative cost of the tunnel and thorough cut was the consideration that determined them. The lesser expense of the tunnel decided it.

Question. Do you know whether they then agreed upon a tunnel?

(Objected to on the same ground.)

Answer. They did; and I was instructed to locate immediately a line for a tunnel; the side stakes were set at once, so that work could be commenced.

Question. At what date was this?

Answer. I could not state exactly, but I should think about the 15th of April, 1857.

604 Question. What was the comparative expense of the thorough cut and of the tunnel according to their estimate?

(Objected to on the same ground.)

Answer. Taking the most feasible location for the thorough cut at the prices named in the contract for the thorough cut work, the expense would have been about three times as great for the thorough cut as it had been for the tunnel at the prices fixed in the present contract for the tunnel work. This is my conclusion; and I have carefully considered the matter. I do not remember the precise relative cost of the two modes as estimated by them at that time.

Question. Did Mr. Kilbourn object to the tunnel at that time?

(Objected to on the same ground.)

Answer. Mr. Kilbourn was strongly opposed to the plan of a tunnel, saying that he did not know anything about tunnel work; that he doubted whether it was feasible; whether too long a time would not be consumed in making it. Mr. Woodward mentioned to him that I had been engaged a good deal in tunnel work, and was well acquainted with it. He finally yielded, upon consultation with the chief engineer and others, in view of the great saving in expense.

(Mr. Lynde objects to all evidence of the conversations of Mr. Kilbourn and Mr. Woodward and the witness; and all evidence on that subject is taken subject to the objection, that it is irrelevant and immaterial.)

Mr. Kilbourn stated that he was going to St. Paul, and, consequently, could not make the arrangement himself with Mr. Chamberlain in regard to the tunnel, but that he would write to Mr. Goodrich, vice president of the company, about it. He wrote a letter at Sparta, which was sent to Mr. Goodrich.

I know the prices at which the tunnel work was let. I have been engaged upon one tunnel of about the same length as this. I had charge of it. I have visited a great many in the course of construction.

Question. In view of all surrounding circumstances then existing, was that a reasonable contract in point of price agreed to be paid for the work?

(Objected to by Mr. Lynde.)

Answer. My impression was that it was too high in some particulars and very moderate in others. The price for the approaches was, I thought, too high; the price for the tunnel work I should have wanted increased, to make myself safe in doing it; the arch work I thought too low, for I did not think the material for it could be got nearer than Kilbourn City, and the roads were very bad. When I was there the ridge was covered with snow, quite deep, except where very strong winds had blown it off, and the exposed surface of the ground indicated sandstone, with some iron; there were also pieces of flint about. There were springs of water, one on each side of the ridge, and the expectation was that we should meet
605 water. Water is now dripping at several places in the tunnel, causing some little trouble, but nothing at all serious. The approaches are in valleys coming up to the main ridge; of course we selected, in locating the line, the lowest ground; the ground slopes on either side from the ridge to the approaches. The idea of a tunnel had been talked of before. When I received my instructions in the first place, I inquired about a tunnel, but was informed that Mr. Kilbourn had said positively that there should be no tunnel on the road. I ran all my lines with reference to a thorough cut. There is almost always a great risk in making a tunnel, (unless it be a very short one,) as regards the material to be excavated from it. Sometimes, when the tunnel is short, and you can see the face of the rock on both sides, you can have a certainty of what the work will be. Generally, however, there is a great uncertainty. I know of a tunnel on the Baltimore and Ohio road, which was let with the expectation that the material was limestone; upon working into the hill, however, it was found that the limestone was immediately over the tunnel, forming a solid roof, and that under that was only a clay, which was shovelled out without trouble.

Question. What rates have you known tunnel works to cost or to be let at? On what circumstances does the cost of construction depend?

(Objected to by Mr. Lynde, because it is double—that the first part is immaterial and irrelevant.)

Answer. I know of no tunnels which have been let before the ground was opened, so as to show what the material would be, being let at less than six to eight dollars a yard. The price depends upon the knowledge which may be obtained by the nature of material in the neighborhood, and also on the price of labor, materials, and provisions.

Cross-examined by Mr. Lynde:

I am now in the employ of the La Crosse Railroad Company, not of Mr. Chamberlain. The company pays me through Mr. Doty, secretary and treasurer. I am engineer on the road. I am hardly chief engineer, but I am remaining to finish up what engineering there is to be done. I suppose I am still division engineer. I have at several different times had to do with matters on the eastern division. I have measured several gravel pits; one about 14 miles, one about 48 miles, and one about 81 miles from Milwaukee. I have also made a plan for a draw-bridge, which was to have been built in 1857, over the Portage canal. It was never built. I don't remember just now of anything else in particular which I have done on the eastern division. Three or four weeks ago I set some grade stakes for raising the track at one place on the eastern division. Two of the gravel pits, 14 and 48 miles from here, I measured within the past month. I don't remember when I measured the other; it was some time last winter. That is between Cambria and Midland, about 14
606 miles, I should think, this side of Portage. I do not know for what purpose it was measured; I was requested by Mr. Woodward to measure it. I made a return of my measurement. I had the original cross-sections, which were furnished to me by him from the office. I don't recollect how much land had been taken out of these; I have nothing now to show. I should think there were 70,000 or 80,000 yards. That was a borrowing pit. I have seen gravel taken from that pit, and put on the road for ballasting. I have seen them at work three or four miles from that pit with gravel which came from that pit.

I don't know how much of the gravel from that pit was used for ballasting. It is 27 miles from Fox lake to Portage. It is less than a quarter of a mile from Fox lake to the crossing of Fox lake. I don't know whether the work done on that portion of the road that cross Fox lake was included in the ballasting contract.

I don't think I have testified on my direct examination that it was. A majority of the work done there was done in the summer of 1857. I can't tell, within a month, when he (Chamberlain) began or when he stopped. I was then at work between Kilbourn City and La Crosse. I passed over the road between Beaver Dam and Portage, I suppose, about once a month in the cars. I did not pass in any other way. In passing I got out of the train a number of times to go and look at the work at Fox lake, then under construction. The trains stopped there to wood and water and to change passengers, and they

went very slowly over the work, giving me an opportunity to examine it. I should judge it was four or five hundred feet from where the cars stopped to take wood and water to the point of the crossing of Fox lake. I can swear that it is not more than a quarter of a mile. The water station is east of the depot, and the wood is strung along some distance east of that. I don't remember any particular dates, when I got out of the cars to look at the work, but I recolleot doing so several times. I never stayed over a train there. I did not see anything being done there, except the track men fixing the track, putting under it material which had been thrown off there. The track was laid there at that time. It was on material that had been hauled up there. The first time that I recollect paying attention to it, some of the track, I can't say how much, was laid on piling. I don't recollect of seeing them doing anything to that. The men were raising track on the embankment. It appeared sometimes to have settled, sometimes on to one side, throwing the track out of line. That occurred elsewhere on the road, about 12 miles this side of La Crosse. These are the only indications that I saw of there being a sink-hole there. Four or five times, when I have been passing in the cars, I have seen them lining up the track. That is all that I have seen, from which I know there was a sink-hole there.

I don't know how much gravel it took to line up the track. I do not know, of my own knowledge, that Mr. Chamberlain had any authority to fill up that crossing at Fox lake. I do not know how
607 much earth or gravel he used in filling there. I cannot now state, from information or otherwise, how much he used. I can't state from my knowledge or from information where he got the earth or gravel that he used in that filling. I only know from the returns of the assistant engineers how much ballasting was put on the road between Beaver Dam and Portage. Those returns are in the office of the chief engineer in this city (Milwaukee.) I judge of the character of the ground at Fox lake, and of the necessity for piling and filling, from what I have been told, and also from what I saw of the bank and piling settling. I saw nothing but what I have stated. I have it from Mr. Woodward that this paper, marked A, is the final estimate of the work; and I have the estimate of his estimate-book, which he left in my possession.

That book does not show the data on which this estimate was made up. That is the only knowledge I have of this being the final estimate. The estimate is made up from the cross sections and notes of the different engineers, and the cross sections of the borrowing pits. These cross sections are in the office of the chief engineer, in my custody. I know that there are cross sections and returns, from which this estimate was made up. I only know as to the correctness of the estimate, from the fact that I have measured and cross sectioned one of the borrowing pits, and have examined the cross sections of the others, made by the assistant engineers, and have tested various items of their calculations. I tested the calculations of some of the areas of the cross sections, and of some of the quantities. I did not go through the whole thing at all, but only here and there, to satisfy

myself. I have made those calculations within the last few days. I am certain I made calculations in regard to the ballasting. I did not add up the quantities contained in those various reports, and I do not know what the sum total is. I suppose this estimate was made up from the sum of those quantities. I did not find among them any return of the work at Fox lake. I suppose that was kept separate. I think I measured the borrowing pit between Cambria and Midland, eight or ten months ago. I don't know how much of the gravel from that pit was used for ballasting. I have among my reports, one that would agree with the measurement of the borrowing pit that I measured. It is the report that I made.

SATURDAY, 2 *October*, 1858.

I have brought, this morning, such of the returns as I could find. I suppose they are not all. I find only three of the final returns, and two by assistant engineers, and one by myself. I have some monthly returns besides. I have no other return of the number of yards in the pit measured by me except that made by myself. I have the original cross sections. I have, in addition, the cross sections of another pit, but not the quantities, as the calculations are not made. I have nothing to compare my measurements with,
608 except the quantities mentioned to me by the chief engineer as having been ascertained before. He gave them to me verbally. He did not give me the exact quantities, but stated that I had made it a trifle less than it had been made before. These returns apply to a pit at Portage City; one near Midland, I believe, and one west of Fox lake, besides the one which I measured. In regard to the one west of Fox lake, the cross sections are returned, but not the quantities. I do not know, and I have nothing to show how much of the gravel taken out of the Midland pit was used in ballasting. I suppose that the gravel from the Portage pit was used on the eastern division, except the deduction mentioned on the return for the quantity used west of Portage, from the fact that such deduction is mentioned. I have made some calculations on these other two returns. I have calculated some of the areas, and found them correct. I have not made any calculation on the return of the pit west of Fox lake. All the reports that I have with me show in all 138,667 yards of gravel taken out of the borrowing pits. I do not know that Mr. Chamberlain opened that borrowing pit half way between Cambria and Midland, or as it is called the steam-shovel pit, (having been worked by a steam shovel;) I have been told that he did. I don't find any monthly return of cross sections of the gravel pits on the eastern division. There are so many papers and books there that I have not been able to examine them all. I have never seen those returns there. If Mr. Chamberlain drew his pay each month for ballasting done, he probably did so on the basis of the monthly estimates, which are made up from the returns of the assistant engineers. I suppose the chief engineer very seldom makes a supposed estimate. I don't know how much of the western division was completed by

the first of October, 1857, and don't remember whether the cars then ran beyond or to Kilbourn City.

It is seventeen or eighteen miles from Portage to Kilbourn City. The road was graded to Orange, about four miles west of New Lisbon. I believe the grade was completed to that place on the first of October, 1857. I believe New Lisbon is about forty-three miles west of Portage. To the best of my recollection the road was all graded to that point at that time.

I think there was at that date a side track at Lewiston and Kilbourn City. I am not positive whether there was any side track at Portage included in the western division. I do not know exactly where the tine is between the two divisions. I am certain there was at that lime side track at Kilbourn City. I could not say how much was then completed on the whole division. I do not know that there was any track laid west of Kilbourn City.

In January, 1858, there was completed on the western division, two 32-100 miles of side track, including twelve hundred feet of main line, which had not before been estimated. At Lewiston there were
1,053 feet; at Kilbourn City, 3,602; at linden, 1,102; at Mans-
609 ton, 1,496; at New Lisbon, 3,808; and the twelve hundred feet of main line. The road was graded to Orange. That I state from recollection. I have no minutes to show that. The item of grading and masonry was made up by taking the grading and masonry west of New Lisbon only. It was put in at $10,000 per mile, because it was supposed that the remainder of the work to be done would amount to about $2,000 per mile, to make up the $12,000 per mile for the 9½ miles. Immediately west of the tunnel there was some grading done, but not finished. There was a space immediately west of the tunnel where no grading was done; then there was about three quarters of a mile partially done. Then a short distance west of that was another piece of two miles nearly finished. Commencing about half a mile west of Sparta, there was work done at various points, scattered over some sixteen miles; at some places very little, and at some places nearly finished; in all about 36,500 yards. There were a great many places on the western division where there was extra haul. There is a memorandum of it made up by Mr. Woodward, in his handwriting, from measurements made by the assistant engineers. This paper shows merely the extra haul, not the whole length of haul. I suppose most of the returns of the assistant engineers, from which this statement was made up, are in the office of the chief engineer.

On the first of October, 1857, twenty-three hundred and thirteen stations were completed, as to grubbing and clearing. Making something over forty-four miles of grubbing and clearing actual stations of timber which had been grubbed and cleared. There were a good many stations on the work where no grubbing and clearing was done. The estimate of work done included also a proportionate amount of stations where no grubbing and clearing was done. The amount of grubbing and clearing which I have stated to have been done, I derive entirely from a memorandum in my possession, made in the hand-

writing of the chief engineer. I will furnish a copy of that memorandum, to be attached to my deposition.

Question. From your knowledge of the line of the road can you say that there were forty-four miles of actual grubbing and clearing in all to be done on the western division?

(Objected to by Mr. Emmons as immaterial and irrelevant.)

Answer. I think there was more than that; I can't tell how much more.

There had been, on the first of October, 1857, some grubbing and clearing done west of the tunnel; I think about eight miles.

I have no returns showing the amount of solid rock excavations up to that time. This item in the engineer's estimate is made up from the returns of the assistant engineers. I suppose those returns are kept in the office of the chief engineer. I have a memorandum, I think, showing the roadway and cattle-passes made by the first of October, 1857. The items of it were given to me by Mr. Woodward, some ten days or two weeks ago. I went along with Mr. Wood-
610 ward and Mr. Sill, in their re-measurement, and was present when the items were first entered by them. I remember some of the items. I know about this arched roadway. It is about two miles west of Kilbourn City. It is of stone. It had to be built of very heavy work, because the foundations were bad. I suppose the work would be worth $4 or $5 a perch. I don't know the amount of stone-work in it.

I suppose the returns in the chief engineer's office will show.

I recollect one under-pass that was completed by the first of October. It was the other side of Kilbourn City, about two miles. It was made of two bents of timber planked up. I don't remember the height of the bank. I should think at a rough guess that it would cost about two hundred dollars. I don't know how much timber and lumber were used in its construction. I suppose, according to the best of my recollection, that these are composed of mud sills, with three upright posts on each side, with caps on top of those posts, made of timber about a foot square. There are braces (diagonal) running from near the bottom of the posts to the mud sills. I suppose there are also cross-pieces of ten inches to a foot square, and stringers. I should think that under-pass is about fifteen feet high. I do not now recollect any other than the one I have mentioned. I will give a copy of the memorandum of roadway and cattle passes.

The item of "excavations for foundations and timber for same," applies to all excavations for culverts. In many of those, timber foundations are put in for the masonry to rest on, to prevent the masonry from settling unevenly and cracking, especially where the ground was soft. I knew where most of the excavations were done. They were at the culverts and bridges. There were some masonry culverts. There was one about a mile west of Kilbourn City. There were several put in west of Kilbourn City before the first of October, 1857.

The item of bank walls includes several walls. There is one at Lone Rock, between Portage and Kilbourn City. I don't remember

the dimensions. There was one about 2½ miles west of Kilbourn City. There was one about half a mile this side of Kilbourn City. That is all the bank wall that I remember. The quantities of those were returned to the office of the chief engineer, I suppose, and should be now in his office, of which I have charge.

There was some pile bridging at these different places, I think, between Portage and Kilbourn City. I don't know how that item is made up.

I think that arched roadway is about 2½ miles west of Kilbourn City. It is where the road crosses on an arch over a ravine, in which runs a highway. The tunnel culvert is near Kilbourn City; and is a culvert tunnelled through the rock, to let out the water from a ravine, which had been dammed up by the the embankment of the road. I don't know how much ballasting had been done by the first of
611 October, 1857. I could not tell whether there were five miles or ten miles. There was some. It ought to appear in the returns of the office of the chief engineer. I don't know whether Mr. Woodward is now chief engineer.

The paper marked E, which I now produce, is a copy of the memorandum made by Mr. Woodward as to the grubbing and clearing, which I have mentioned.

(Paper marked E produced, and attached hereto as a part of this deposition.)

This paper now produced by me, marked F, is a copy of the memorandum in Mr. Woodward's handwriting, mentioned by me as relating to the extra haul.

(Paper marked F produced, and attached hereto as part of this deposition.)

I have looked in the office for further returns, but I have found none relating to road-crossings and under-passes.

J. M. L. STAUGHTON.

William R. Sill, being duly sworn, says:

I have been an engineer, a civil engineer. I followed that profession from 1844 to 1856. I have been in almost all capacities as engineer on railroads.

I was chief engineer on the La Crosse road from 1853 to 1856, about two years and a half. I was succeeded directly by Mr. Kilbourn, and afterwards by Mr. Woodward. I was employed to make a re-estimate of work done by Mr. Chamberlain on the western division of the La Crosse road, under the contracts relating to that work. I undertook the job under an appointment made by resolution of the board of directors of the La Crosse and Milwaukee Railroad Company.

I acted under that. Mr. E. W. Woodward, chief engineer of the road, acted in concert with me. Acting under that resolution, Mr. Woodward and I went on to the work, with such assistants as were necessary, with the original profile, cross-sections, and field-notes of the work, and proceeded to make a re-estimate. We estimated up to the first of October, 1857. This being in March, I was of course

obliged to rely upon what Mr. Woodward and Mr. Staughton told me as to the amount of work that had been then (1st October, 1857,) done. We had access to all papers that I considered necessary. Everything that I called for was furnished me. All field-notes and surface-notes were at my command; I carefully compared them with the work as completed. In all cases, where I considered it necessary, we took new measurments. We had access to all contracts, all profiles, all field-notes, all cross-sections, everything that an engineer could ask for in making a re-estimate. We made that re-estimate on the prices named in Mr. Chamberlain's contract, putting our own construction upon it. The result was that we found there had
612 been done upon the main line forty-three miles, at $12,000 per mile, less some items, which I shall mention. We found the work to have been done according to the items stated in the report signed by us, which I now have in my hand, and a copy of which, marked C, is hereto annexed. We called it forty-three miles finished, although there was a little not quite completed. There was a little track to be laid on the west end of that, and also some little grading to be done to prepare the bed for the track. There were two 32-100 miles of side track, at which we arrived by measuring the side track laid.

The third item shows the excess of grading, bridging, and masonry, over and above the forty-three miles that were considered complete. The item of extra haul, $27,537 30, was arrived at by careful computation from the notes and from the profile. The next item, of grubbing and clearing, we arrived at by comparing what had been done with what yet remained to be done. The solid rock excavation was obtained from measurements made by ourselves. The loose rock excavation was obtained from the returns of the assistant engineers.

It is impossible for any one to measure that work after it is completed. The next item, of roadways, bridges, cattle-passes, and changing highways, we arrived at by an examination and estimate of each separately. The excavation of foundations, and timber in same, we estimated from the statements of Mr. Woodward, Mr. Staughton, and Mr. Howell. No one can know anything about the amount of timber under a culvert after it is completed. The same in regard to a bridge abutment, or any other structure. The next item, of bank wall, we took the quantities from the returns of the assistant engineers, and the price, $3 per yard, was agreed upon by Mr. Woodward and myself as a fair price for the work. The next item, of tunnel approach excavation, was got at from careful measurements made by ourselves.

The next item, pile bridging, was an estimate of the cost of doing the work.

The item of tunnel culvert at Kilbourn City we got in the same way. We estimated what it was worth to do it. We did not estimate quantities in that.

The next item, ballasting 45 32-100 miles, at $2,000 per mile, as per stipulation, we got at by a close examination of the road that had been ballasted. The price we found in some contract.

The item of grading depot grounds at Kilbourn City we got at from the returns of the assistant engineers, and from an examination of the grounds.

The item of damage for detention and change of line at New Lisbon, we allowed on the statements of Mr. Woodward and Mr. Staughton, that the change of line had occurred, and that Mr. Chamberlain had been obliged to pay $1,121 in consequence of the change of line, and consequent detention. The above items make a total of $1,106,163 85.

From that we made a deduction for work on the forty-three
613 miles first mentioned that was yet incomplete, being some few banks that were yet narrow, and a small part of the track not yet laid, although everything was ready for it.

This was east of Lisbon. We were careful to make a sufficient deduction to cover any expense of fully completing the 43 miles. This was the same for which a deduction had been made in the estimate of the chief engineer. In our estimate, we called the solid rock excavation seventy-five cents a yard; in the chief engineer's previous estimate of October 1, 1857, the same item was called one dollar per yard. This difference in price arose in this way. By the terms of Mr. Chamberlain's contract of January 20, he was to be entitled to only seventy-five cents per cubic yard if the whole amount of earthwork excavation in the section should fall short of twenty thousand yards per mile. By computation we found that the whole earthwork did fall short of twenty thousand yards per mile, and therefore we fixed the price at seventy-five cents. In making up the third item of grading—bridging and masonry over and above the forty-three miles—Mr. Woodward and myself had considerable discussion in regard to the basis to be fixed upon. We finally settled upon a basis which produces the result in our report, and which differs from the basis which they had before. Had we assumed the grading, bridging, and masonry to be a less proportion of the whole work embraced in the contract, then the amount of the item would have been less; had we assumed the proportion to be greater, the amount of the item would have been greater. The proportions were obtained by an estimate. There was in each mile an average of so many thousand yards to be done in the first place, as found from a computation of the whole. We also estimated the value averaged of the bridging and culverts per mile; also the value of the track-laying—ties, chairs, and spike. From those data, by the simple rule of proportion, we arrived at the proportion of any one of the items to the whole. We measured all the work that had been done under Mr. Chamberlain's contract. An average of the whole work would make to each mile so many thousand yards of grading. So we divided the total estimated cost of the bridging and masonry by the number of miles in the division, and then got at the average cost of that work per mile. The items of ties, track-laying, chairs, and spike we compute for one mile, as the cost of those is substantially the same for each mile. If for instance, two-thirds of the grading work had been done within the space of this forty-three miles, we should have allowed, in the first place, the forty-three miles, and then we should have included

in this item of "extra" the excess of grading done above the proportionate amount. In the final estimate of the engineer, he had assumed, in the item of extra grading, bridging, and masonry, as a basis, the proportion of amount of work done west of New Lisbon to the whole amount to be done west of New Lisbon without regard to the excess of average of work done east of New Lisbon. The
614 item of grubbing and clearing was got at by the same process; but in that item there is a broader margin for the exercise of judgment than in any other item. It would be extremely difficult to estimate exactly the proportion which the amount of grubbing and clearing already done bore to the whole amount to be done on the line.

I am familiar with the ridge about where the tunnel is, and also where the thorough cut would have been. I did not run the lines, but I became familiar with the country. I suppose that I do know where the lines were run, and I believe that I have examined them all. I am prepared to say whether there would be a difference in the cost to the company of the tunnel and of a thorough cut through the ridge, at the prices respectively named in Mr. Chamberlain's contract, or at any other reasonable prices for the work. In my opinion a tunnel would not cost over one-third as much as a thorough cut, at any point in the ridge, supposing in each case a good road to be made. The tunnel, of the dimensions now fixed, requires an excavation of about 14,500 cubic yards. Assuming the depth of the cut at the end of the tunnel to be fifty-four feet, and at the centre one hundred sixty-two feet, and the slope one to one, the excavation in a thorough cut between the points which are now the ends of the tunnel, would be 813,920 cubic yards. By using sharp curves, the depths of cutting might have been reduced to fifty-four feet at the ends, and one hundred feet in the centre, or thereabouts. On such a line, with a slope of one to one, the excavation would be 386,400 cubic yards. The approaches would be additional, and would be the same in all the cases. If the rock were hard enough, in the case of the last line, (with short curves,) to stand a slope of one-half to one, the excavation would be 220,435. This, too, is estimating it only 1,330 feet to get through. If the short curves were used, the length of the cut would be increased thirty to fifty feet, and the excavation would, of course, be more. The cut with these sharp curves would not be so valuable, and a road with a thorough cut would in no event be as valuable as with a tunnel, for the reason that the slopes of a one hundred or one hundred and sixty foot cut would cover a broad expanse, and in a rain-storm a large body of rain would fall in there, and running down make a torrent through there, that would make it almost impossible to keep a tract there. In winter the snows would fill up the cut to a great depth.

Question. Do you know how the prices in Mr. Chamberlain's contracts compare with those in other contracts let at or about that time within a season or two, taking into account all circumstances then existing?

(Objected to by Mr. Lynde as irrelevant and immaterial.)

Answer. The only contracts that I know of to which I could compare them (having been let about that time) are those of the La Crosse company with Mr. Cleveland, and Mr. Chamberlain's prior contract with that company. I was engineer when Mr. Cleveland was acting under his contract with the company. Taking the
615 appearance of the works in the two contracts at the time they were taken, I should have estimated that Mr. Cleveland's contract would yield the greatest percentage of profit. I do not speak of the way that the work proved, but as it appeared at the time it was let, and as it would have been sub-let for at that time.

I have made a calculation of the two, putting them both upon an equal basis, estimating from the appearances at the time of making the contracts, and have computed the cash cost of the work.

On Cleveland's contract I have made the following estimate:

Earth excavation, 218,000 cubic yards, at 25c	$54,500 00
Hard-pan, 20,000 c. y., at 30 c. extra	6,000 00
Cross-ties, 7,000, at 20 c	1,400 00
Government duties, $66,000	66,000 00
Bridging and culverts	3,000 00
Frogs and switches	1,000 00
Chairs and spikes, 342,500 lbs., at 4½	15,412 50
Track-laying, 46 miles, at $300	13,800 00
Estimated cost of work	161,112 50

Amount to be paid for above work, $336,453. $336,453 divided by $161,112 50 is $2 08, showing a profit on Mr. Cleveland's contract of 108 per cent. Deducting 20 per cent. discount on his securities leaves 67 per cent. profit.

On Mr. Chamberlain's contract I estimate the cash cost:

Earth excavation, 20,000 cubic yards, at 25 c	$5,000 00
Ties, 2,400, at 20 c	480 00
Masonry and bridging	1,500 00
Chairs and spikes, 10,000 lbs., at 4½	450 00
Track-laying	300 00
Cash cost per mile	7,730 00

Showing a profit of fifty-five per cent. These estimates are made from the appearances of the work to be done at the time the contract was made.

I have estimated the amount (in Mr. Chamberlain's contract) of earthwork at 20,000 yards per mile, because everybody then supposed that there would be more than that. The only profile then in existence showed much more than that.

MONDAY, 4*th October*, 1858.

By taking time, engineers can generally make a very good approximate estimate of the amount of work done after it is com-
616 pleted. There might be cases, as for instance in a sink-hole where they could not come anywhere near the true amount. It would not be likely to be perfectly accurate in any case. It would be extremely difficult to classify work when excavations are opened; the material on exposure to the weather often changes.

You could not ascertain the amount of ballasting without having the measurements of the pits from which the gravel was taken; or you must have the original surface of the pits, and then measure them. Mr. Woodward and I were engaged in our measurement between two and three weeks hard work and constant application. It would have taken us, having a party of three or four, from two to three months of well applied time to have made such an approximate estimate, not having the original field-notes or other papers.

FRIDAY, 29*th October*, 1858.

Cross-examined:

I am not now engaged upon any road. When employed to make this re-estimate I was not engaged upon any road, but was attending to my business at La Crosse. There was not to my knowledge any person employed by Mr. Cleveland, or any other creditors, to take part with me in that re-estimate, nor so far as I know, any notice given to Mr. Cleveland, or any other creditor, to be present.

The statement, (Schedule C,) is the estimate of the work which had been done up to October 1st, 1857, as near as we could get at it.

Men were working between New Lisbon and Tomah when we were making our estimate. The track was then laid, I think, about ten miles beyond the forty-three miles mentioned in our statement.

I had no means of telling what work had been done before October 1st, 1857, what work after that, except the appearance of the work, and the assurances of those with whom I was associated. We could not of course tell from the appearance of the work, whether work had been done in the middle of October, or before the first of October. I relied substantially upon the statements of my associates.

Some of the work, however, indicated plainly that it had been done before the preceding winter. I understood, as I have already stated, that there was a little track to lay to make up the 43 miles. I am not now able to give the items for which we made the deductions named in the statement. I think a good portion of the amount was for ballasting. I think but little was to be done to complete the grading and track-laying. We were engaged between two and three weeks in making the surveys and re-estimates; over the most of the work I compared the field-notes and profiles with the work itself. I did not measure every excavation and embankment, but wherever there was any apparent discrepancy between the field-notes and the appearance of the work, I examined them carefully, and made the necessary measurements. We were engaged only about eight

617 to ten days in the field in making the actual surveys and measurements; we spent about half of that time, or a little more, say five days, on the 43 miles, I should think. I could not tell what proportion of the embankments in that 43 miles we actually measured; I was usually content, when I came to an embankment, if it was of full width and apparently of full height, with making two or three measurements to satisfy myself of the accuracy of the field-notes, and that the quantities mentioned in the field-notes were really there. If you measured two or three points and found that the embankment was of the right height and width, such points being two or three hundred feet apart, you could with the eye very readily detect any serious discrepancy between the work done and the field-notes. I could not say that we actually made such measurements in every case; there may have been some slight embankments where I made no measurements; in some I satisfied myself with measuring the height only. I started with this idea, that I must look at the thing closely enough so to satisfy myself that there had been no collusion between the contractor and the engineers. The statements made to me by them I endeavored to compare by the appearance of the work itself. The work from Portage City to a point four or five miles this side of Kilbourn City I did not examine so minutely as the rest of the work, because they had been completed a year or more, and I relied more on the field-notes along there; still I there made such examinations as satisfied me that they were substantially correct.

I made memoranda in the field-books of the assistant engineer when I found any variations. I took those notes with me, and when I found them correct I made no memoranda; when I found variations, I made in them the memoranda. I made no other memoranda of our examinations.

On reflection, I now recollect that we did have other memoranda. The tunnel work and all west of that we kept in a different way. I don't know what has become of those memoranda; I do not know whether I gave them to anybody; I did not count them of any particular value after I had completed my estimate and report; I may have them in my office in La Crosse; I have some papers there; I don't remember when I saw them last.

The profile is the surface of the ground and the grade lines put on to a scale. It marks the line to be graded, and the natural surface as it is; only the centre line is given, not the side lines; it is the centre longitudinal section of the road.

The field-notes made before the contract is let are the original field-notes from which the profile is made; I did not have those. They would be of no use to me so long as I had the profile. I had the working field-notes of the assistant engineers. The working field-notes contain the depth of cutting or filling at the centre and slopes, with such intermediate depths as are necessary to show the original surface of the ground, the distances of the slopes from the
618 centre, and the quantity contained in each station or half station, (depending of course upon how often they have taken the

cross-sections.) Cross-sections are the measurements taken of the depth and width of the cutting or filling, showing the appearance and dimensions of a transverse section of the work. The field-notes show you everything, in short, necessary for calculations. Whenever the surface departs from a plane the field-notes show the height or depth and other dimensions of the new grade. When you come to rock-cutting the assistant engineer should, after the rock is stripped of the earth, take a second set of field-notes, showing the cross-sections of the solid rock. We could not test perfectly the centre line of the road; still, if the ground was level on each side of the road, we should naturally infer that the surface was level where the road lay. We could measure accurately the outer slopes. The inner line was matter of estimate from the general appearance of the ground. It is the same thing with excavations and embankments. If there is between slope-stakes a great elevation or depression, you cannot fully test the accuracy of the centre line. It is just as likely to be a plane in an excavation as in an embankment. It is just as likely to be irregular in one as in the other. In most instances you can trust to appearances to a great extent. If between slope-stakes there is a mound or a gulley, the slope-stakes would not of course show the work done, and you would have to rely upon the field-notes; so, if the road went through the centre of a mound or ravine, you could not exactly ascertain the height or depth of the centre except from the field-notes. But the surface of a hill is as likely to be a plane as a level surface. The country from Portage City to New Lisbon is plane surface generally, except a few miles about Kilbourn City. Taking into consideration the whole surface of the ground, I think it possible that there might have been an error of five per cent. in the field-notes which we could not have detected. I do not think that there was any error. I do not remember who made the original field-notes and profile. When a survey is made the man who runs the line usually keeps the minutes of survey, the courses, and distances. The person who takes the level puts down the heights and depths on profile paper. He puts down the surface of the ground on profile paper. The notes of those measurements constitute the original field-notes. These we did not need, because the field-notes of the assistant engineers embrace all those, and a good deal more. I do not of course mean to swear that the original field-notes were correctly given in the working field-notes which we had. They were there, but I cannot say that they correspond with the original field-notes. The original field-notes would not show the grade. I cannot recollect precisely how many miles of track to be laid are included in the items of "deductions," in our report. My impression is, that it was not over four miles; but that is merely an impression. I cannot tell how much the item of ballasting was. My impression is, that
619 there had been but little ballasting from Manston to New Lisbon, seven or eight miles. This side of Manston, also, there was a portion of the road which had only a little ballasting. Such was the state of the road in March last, and such, I understood, had been the case in October before. I cannot state the gross amount

deducted for ballasting. I cannot state now more particularly as to the amount of ballasting yet to be done.

The road was to be divided into three divisions of about 34 miles each. A section is a portion of the road, usually about one mile; sometimes a little more and sometimes a little less. I observed in our survey the nature of the ground. I could not say upon how many sections the material for ballasting might be found. There might have been five or six sections. There might possibly have been more, but I don't think there were; I did not examine particularly with a view to ascertain that. I could not now tell, but I should think that there was but little of the road between Portage City and New Lisbon where the surfacing or ballasting had been thrown up from the sides. I did not keep this in my mind all the time, but I should have noticed it if it had been so. I remember a few instances of that kind and but few. You could only ascertain that state of things by the appearance of the materials.

Wherever the materials on the sections might have been so used, they were so used, or at least should have been so used. I should think from the appearances, that from Portage to Kilbourn City most all the ballasting had been hauled on by the train, from how far I cannot say.

I don't remember how much of the ballasting from Portage City to Kilbourn City we estimated had been done by October, 1857; I think from three-quarters to seven-eighths, perhaps all. In making our deductions, we estimated some portions of the grading in the neighborhood of New Lisbon as having been unfinished in October, 1857; also some of the embankments near Kilbourn City were rather narrow and deductions were made for those. I could not now say how many yards we estimated as deduction. In estimating the value of the grading, ballasting, and track-laying, and the other matters included in the "deductions," I intended to charge Mr. Chamberlain the full price which he got by his contract, and even something more.

Question. In estimating the amount to be allowed for any given number of yards of grading ascertained not to have been done, how did you get at the amount which should be allowed to the company according to the terms of the contract?

Answer. I have stated that we did not get at the number of yards particularly, but that we lumped that, intending to put on a price that would fully cover the deficiency. We made an estimate on that point as we went along, at prices something greater than Mr. Chamberlain was to receive.

He contracted to build the road from Portage to La Crosse. He was to do the grading, bridging, and masonry, and furnish
620 ties, chairs, and spikes, and lay the track, for $12,000 per mile.

After the line had been surveyed and profile and estimates made, we found there were about so many yards of grading to the mile; I forget now how many, but I think 14,000 or 15,000, as it proved. We estimated as near as we could the cost of the grading, of the bridging and masonry, of the ties, chairs, and spikes, and of the track-laying per mile, which was less in the whole than $12,000 per mile.

We then estimated the actual cost of the grading of the line, and thus got the average cost of grading per mile, which I think we estimated at about $3,800 per mile, although I am not sure. The cost of bridging and masonry I think we estimated at somewhere from $1,400 to $1,500 per mile. Ties were $500 to $600; trackl-aying from $300 to $350; chairs and spikes from $500 to $700; making a gross sum of say $6,500, leaving a balance for profit. Adding to the cost of each item as above a proportionate amount for profit, and we have the basis of contract price for each item as we estimated.

The bridge at Kilbourn City was not included in Chamberlain's contract as I am aware. I do not know whether the divisions were precisely equal to each other in length; we did not take them much to account in making up our estimate.

Question. How many bridges are there between Portage City and Kilbourn City?

Answer. I do not know of any, except a pile bridge, which was extra. There are some culverts and pretty large ones.

I could not tell the cost of the pile bridging between Portage City and Kilbourn City; I should think about two thousand dollars.

Between Kilbourn City and New Lisbon there are a number of bridges. I do not recollect how many. I could not tell how much they cost. I don't think we made a particular estimate of the cost. We made a relative estimate of their number and character in comparison with the number and character of those yet to be done. I have not now any recollection of the number and character of the bridges between Portage and Kilbourn City from which I could make even an approximate estimate of their cost. I am not sufficiently familiar with them to do that.

I can't now tell the value of the masonry between Portage and Kilbourn City. There were some culverts at Kilbourn City, but I have not now any definite idea of the cost and extent of them. I did not see them there before the first of October, but I am very well convinced that they were there, because the earth could not have been put over them between October and March. I cannot now tel where the culverts were. There are culverts all along the line of any railroad. There must be a culvert under almost every embankment. I remember some particularly at Kilbourn City, where there were several deep fills.

I cannot tell what was the average grading from Portage to New Lisbon. It was more than the average from Portage to La
621 Crosse. I think it was more than 16,000 yards per mile. I should think not more than 18,000 yards per mile. My impression is, that it was about 18,000. I may be mistaken, as I have no data whatever. The average of the first division west of Portage (34 miles) would rather exceed 18,000 yards I think, say 500 yards, as the grading from 34 to 43 miles west of Portage was rather light work. A part of the grading mentioned in the item of grading, bridging, and masonry, 151,000 and odd dollars, (the third item,) was the excess of the average quantity from Portage City to New Lisbon. A part was between New Lisbon and Tomah, (18 miles from New Lis-

bon,) a part was at and near the tunnel, and there was work scattered along the La Crosse valley. I mean by the excess, that if he had contracted to build 100 miles. and that had proved to contain 100,000 yards, and he had built 40 miles and done half the grading, then he would have done an excess of grading in proportion to the number of miles completed. The excess on the 43 miles is the excess of work done on that piece, over 43-100 of the whole work. We did not, in estimating that excess, deduct the amount of cubic yards of solid rock and loose rock excavation, that I remember, from the gross amount of the grading on the 43 miles.

The bridging was done all along where the grading was done. I think in making up the "extra" item of grading, bridging, and masonry, we took in none of the bridging within the 43 miles. It was all west of that I think. I don't remember that there were any bridges complete west of the 43 miles.

There were some culverts; they come in under the head of bridging. I could not tell how many culverts. There might have been ten or twenty. The entire item is, I know, chiefly composed of grading. We made no actual measurement of the culvert work and masonry, any further than comparing the amount of work done with the work which remained undone. I have no present recollection of the amount or cost of the work done.

As to the fourth item, extra haul, we found this all along the line from Portage to La Crosse. I should presume that two-thirds, perhaps three-quarters, was between Portage and New Lisbon. As near as I can recollect, it averaged about the same all along from Portage to La Crosse in proportion to the amount of work that had been done. We got at the amount of extra haul from the profile and from the statements of the resident engineers, Howell and Staughton, that the earth from the excavation had been deposited on those embankments, and from the appearance of the earth that such had been the fact. I don't think we measured the borrowing pits for the purpose of getting at the amount of ballasting. I think we measured them for the purpose of getting at the grading. The most extensive borrowing pits were at Kilbourn City, and they were the principal ones. There were several along there within a space of two or three miles. Where
622 the country is pretty level, and there has been a borrowing pit, a measurement of the embankment will indicate the amount of work done; but where there is a side-hill cut, or the earth has run off into the water, it is necessary to measure the borrowing pit or excavation. The earth from the excavation was principally but not all used in filling, I think. I don't recollect any instance of earth being wasted except at the tunnel, and there we did not attempt to distinguish between earth which had been wasted and that used in embankment. I think the longest haul was between 1,800 and 2,000 feet. I did not keep the memorandum, although we made one, in regard to the distance and amount of the extra haul. Mr. Staughton had it here. This work was principally done east of New Lisbon, as I understand, before the 1st of October. West of that point, at least west of the Red Mills (three or four miles west of New Lisbon,) there

had been but little work done, as I understand, by the1st of October, especially from the Red Mills to Tomah. From Tomah to La Crosse the work sfood just as it was the 1st day of October, 1857, as has been represented to me and as appearance would indicate. I have no doubt about it, although I cannot swear to it. From New Lisbon, about ten miles west, the road was being run for construction purposes in March, when we made our examination. I got my information as to the amount of work that had been done on the 1st of October from Messrs Howell, Staughton, and Woodward.

As to the solid rock excavation, I think that was all east of New Lisbon. I remember now there was a small cut west of the tunnel.

We got at the amount of the rock excavation by actual measurement. I don't now remember the amount west of the tunnel. It was a small cut, not exceeding 3,000 yards. I relied to a small extent on the field-notes for data, and only to a small extent. The surfaces of the cuttings were in a good many instances decomposed. I did not take the field-notes as correct until I had dug with a shovel in beyond the action of the frost, and satisfied myself of the amount of the solid rockwork. The field-notes appeared to indicate a greater amount of that work than had actually been done, but such examination satisfied me that they were generally correct in that respect, and I had very little occasion to make any alteration in their figures. The rock was sand-rock of different degrees of hardness. That was the prevailing character of the rock. I consider this sandstone. It is rock, which being exposed to the weather becomes sand. It is different from the sandstone used in building. There is no slate about it. Some of it was in layers, most of it was in masses, or in thick layers. It is not all laminated, although some is. I made memoranda of those measurements. I don't know where these are. I suppose they are in existence.

As to the loose rock excavations, I took them from the reports of the assistant engineers entirely.

As to the roadway bridges, there was one at Portage City,
623 that is, over the road. There is one at Kilbourn City under the road. These were the principal ones. There were others which I don't now remember. I think the bridge under the road was allowed at some six or seven thousand dollars. The other one, I think, at some four to five hundred dollars. Such is my present recollection. I did not make a very close estimate of the number of yards in the largest bridge. It was returned to me, and I satisfied myself that the amount was about correct. Then Mr. Woodward and I fixed a price. The work was stone. We deducted from the estimated cost of the bridge the estimated cost of a culvert which it would have been necessary to put there, and allowed only the excess.

As to cattle-passes in the same item, I don't recollect particularly about them. They were all east of Red Mills.

As to changing highways, a highway was changed for some distance near Kilbourn City. It was necessary to grade a new one for some distance, instead of constructing a bridge either over or under. I don't now remember how much that cost, but my impression is that it was about a thousand dollars.

I mean by "excavations of foundations," in the next item, excavations for the foundations of the bridges, culverts, &c. I did not investigate that matter a great deal. I took the engineers' returns for that. No man can tell after the bridges are up the amount of excavation for the foundation, and the timber in it. I made some examination of the bridges in reference to this item. I considered from what I knew that the amount of work reported had been done, and the timber reported had been put in. I could not ascertain more certainly than I did.

As to the bank wall, most of it is at Kilbourn City. I think there was a very little two or three miles west of there also. It was mostly in one place, I think. It was near the tunnel culvert. I did not measure those walls myself. I had to take the amount from the return of the assistant to the chief engineer. You could not measure it, nor make an approximate measurement. You could not tell the thickness. Some of it went down under the water. You could not when I saw it measure the superficial surface of it. It was mostly covered with earth and water. I don't remember particularly about it. I know that there was part of a wall there. I don't know whether all was there which had been built, or whether a part had been carried away. I did not try to measure the bank wall, for I knew I could not do it.

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I saw but very little of a bank wall. I don't know that I saw 100 square feet. I satisfied myself by the engineers' statements that the amount reported had been put in. I don't know now whether it had given way or not. I found there had been a good deal of bank wall put in which had failed.

624 From Portage to Kilbourn City the country is generally open; not heavy timbered; some is marshy; some with openings; some is sandy; in the neighborhood of Portage especially.

There is considerable timber near Kilbourn City, a belt three or four miles wide. We would call that oak openings, still it approaches the character of a forest. Beyond there, towards New Lisbon, the country is lightly timbered. It is oak openings. From New Lisbon to the tunnel it is marshy, with tamarack and pine—what you would call heavily timbered. This commences about four miles beyond New Lisbon. I don't know that the grubbing of tamarack is any more difficult than other species of timber. From the tunnel to Sparta it is a heavy gray pine country. From Sparta to La Crosse the country is very lightly timbered; in some places prairie. The distance from New Lisbon to the tunnel is, I think, twenty-four miles. I think it is twelve miles from the tunnel to Sparta, and from there to La Crosse is twenty-six miles.

I should think one-third of the grading from Portage to Kilbourn City consists of simply throwing earth from the sides to the centre; what is technically called side-work. I don't think, on reflection, that one-third of it is side-work. The work near Kilbourn City, this side, is very heavy. There is heavy work for about five or six miles

on both sides of Kilbourn City. The earth is there obtained from excavations and borrowing pits. The cuts and fill are not unusually long there. There was some rock excavation near Manston, some west of the tunnel, but principally within the five or six miles near Kilbourn City. To know the amount of grubbing and clearing which had been done by the 1st October, 1857, I had to rely on the statements of the engineers.

I measured myself the tunnel approaches. The number of yards stated in our report was the result of our measurement. I don't recollect of deducting anything for work done since the 1st October. The approaches were not complete. A portion of the excavation there was sand, and a portion of it sand rock. I could not now tell what was the proportion of each, as we did not attempt to classify it. Possibly a third of the quantity might have been sand.

Sand-rock is sometimes blasted. I have never seen a blast made there. No work was being done at the tunnel when I was measuring there. I have never seen that rock worked. When exposed to the atmosphere it becomes coarse white sand. I don't think I relied entirely on the statement of the engineers that the work had been done before the first of October. The work itself showed that it had stood through the winter. The common report then was that the work had been stopped before first October. The price, $2 per yard, we took from the contract. The pile bridging was between Portage and Kilbourn City. There were some two or three pile bridges there. I could not now tell how extensive they were. When
625 we saw it there was only water there. I should presume it would take 16 feet piles, but I don't know. I don't recollect how we allowed the cost, whether by the pile or by the foot. We estimated what we thought the cost, but whether by the foot or by the pile, I don't now remember. I presume by the lineal foot. I do not remember any of the items connected with that. We got at the value of the tunnel culvert at Kilbourn City from the reports of the engineers of the labor expended there. That was my only source of information. I did not particularly examine it. I did not measure the work myself of grading at Kilbourn City. I took the notes of the engineer who had measured it, and satisfied myself that they were right. I don't recollect the price we allowed per yard.

I only know the amount of the damage for detention and change of line at New Lisbon, because the engineer told me that Mr. Chamberlain had been obliged to pay that amount; I did not notice particularly the point where the change was made.

I was engaged in engineering from 1844 to 1856. I never was connected with Mr. Chamberlain. I don't know that I have ever had anything to do with Mr. Chamberlain's work until I made this re-estimate, except that some ten years ago I made the final estimate on some work he had done in Vermont.

I was engineer on the road when Mr. Cleveland took his contract. The soil on the portion of the road included in his contract was clayey. I think about a quarter of it was hard-pan, but I don't recollect certainly. His contract embraced about thirty-three miles of grading,

I think, including the finishing of work previously commenced. He was to pay duties on the iron, not exceeding $66,000. He was to lay track to Rock river, from a point about seven miles from Milwaukee. I think I should rather take out the sand-rock than the hard-pan. I think the surface of the country from Milwaukee to Rock river is much more rough than that west of Portage. I could not say how much grading Mr. Cleveland performed; how much he paid out for duties, nor how much he received from the company. I cannot recollect anywhere near the amount of any estimates on the road. I recollect that for work done and money paid, he was estimated 208 per cent., or $2\frac{1}{10}\frac{8}{0}$ times the estimated cash disbursements or cash cost of doing the work. I recollect being a witness on the trial of the suit of Mr. Cleveland against the railroad company. I do not recollect how much I then stated the hard-pan could be taken out for. My impression would be that I stated it at fifty cents.

Re-examined:

When I was making the re-estimate, the monthly estimates previously made were not before me. The information furnished me by the engineers was corroborated by the appearances of the work.

W. R. SILL.

626 A.

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE R. R.,
Milwaukee, October 1st, 1857.

Estimate of work done by Selah Chamberlain, contractor, on the eastern division of the La Crosse and Milwaukee railroad, under his contract for ballasting that portion between Beaver Dam and Portage City, from commencement to date:

Ballasting, 192,542 yards, *a* 40c., ...	$77,016 80
To this is to be added, for filling in the bank at Fox lake	20,768 65
Total estimate	97,785 45

I hereby certify that the above estimate is correct.

E. W. WOODWARD, *Chief Engineer.*

OFFICE OF THE LA CROSSE AND MILWAUKEE R. R. CO.,
Milwaukee, Wis., Sept. 29th, 1858.

I certify the preceding to be a true copy from and the whole of the original on file in this office.

LOCK. H. DOTY, *Secretary.*

C.

To the board of directors of the La Crosse and Milwaukee Railroad Co.:

GENTLEMEN: We, the undersigned, having been appointed to make new estimates of the work done up to October 1, 1857, on the line of your road from Portage City to La Crosse, by Selah Chamberlain,

under contract dated January 20th, 1857, and April 30th, 1857, and also under certain stipulations for ballasting the same, respectfully report, that in accordance with a contract made on the 8th day of December last for a remeasurement of the work done on that portion of the road, we have carefully examined each of the several items of work performed, aided by the original notes and cross-sections of the work, and by such new measurements and examinations as were necessary to correctly estimate the value of the work performed, under and in accordance with the stipulations of the above-named contracts, and the following is the result, viz:

43 miles main line, as per contract, at $12,000 per mile.	$516,000	00
2 32-100 miles side track, as per contract, at $12,000 per mile	27,840	00
627 Grading, bridging, and masonry, proportionally equal in value	151,900	00
Extra, as per contract, hauled over 500 feet	27,537	30
Grubbing and clearing, (proportional,) at $300 per mile	18,620	00
Solid rock excavation, 118,557 c. yds., at 75c	88,917	75
Loose rock excavation, 2,400 c. yds., at 50c.	1,200	00
Roadway bridges, cattle-passes, and changing highways, extra	11,700	00
Excavation of foundation, and timbers in same	6,500	00
Bank wall, 3,500 c. yds. at $3 00 per c. yd	10,500	00
Tunnel approach, 7,395 73 c. yds., at $2 per c. yd	147,914	60
Pile bridging	2,500	00
Tunnel culvert at Kilbourn City	2,300	00
Ballasting 45 32-100 miles, at $2,000 per mile, as per stipulation	90,640	00
Grading depot grounds at Kilbourn City	973	20
Damage for detention and change of line, at Kilbourn City	1,121	00
	1,106,163	85
Deduction for work unfinished at that date, but estimated in above, being track-laying, ballasting, and grading	62,000	00
	1,044,163	85

(Signed) WM. R. SILL, *Civil Engineer.*
(Signed) E. W. WOODWARD,
Chief Engineer.

Milwaukee, March 25, 1858.

D.

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE RAILROAD,
Milwaukee, October 1, 1857.

Estimate of work done by Selah Chamberlain, contractor, on the western division of the La Crosse and Milwaukee railroad, between Portage City and La Crosse, from the commencement to the present date.

43 miles of main line completed between Portage City and New Lisbon, as per lease, at $12,000		$516,000
2¼ miles side track with above, $12,000		27,000
Grading and masonry equal to 9⅓ miles, at $10,000		96,000
Extra on earth hauled over 500 feet		41,400
Grubbing and clearing 80 miles, at $300		24,000
Solid rock excavation, 118,250 yds., at $1		118,250
Loose rock excavation, 2,400 yds., at 75c		1,800
	Roadway and cattle-passes	11,700
628	Excavations of foundations, and timber for same	6,500
	Bank wall, 3,500 yds., at $3	10,500
Tunnel approach excavation, 6,400 yds., at $2		128,000
Pile bridging		2,500
Tunnel culvert at Kilbourn City		2,300
Ballasting 45¼ miles, at $2,000		90,500
Total estimate		1,076,450

I hereby certify that the above estimate is correct.

E. W. WOODWARD,
Chief Engineer.

OFFICE OF THE LA CROSSE AND MILWAUKEE R. R. CO.,
Milwaukee, October 1, 1858.

I certify that I have compared the preceding estimate with the original on file in this office, and that the same is a true copy therefrom, and of the whole of said original.

LOCK. H. DOTY,
Secretary.

E.

Copy of E. W. Woodward's memorandum of grubbing and clearing:

Total No. of stations of considerable timber	1,002
Total No. of stations of scattering timber	767
Total	1,769
Total length of grubbing done in heavy timber	304
Total length of grubbing done in light timber	240

To be done Oct. 1, 1857:

Total No. of stations of considerable timber	417
Total No. of stations of scattering timber	501
Total grubbing to do in heavy timber	54
Total grubbing to do in light timber	79

F.

Copy of E. W. Woodward's memorandum of extra haul:

Between sta.	24	and	50	18,000	yds.	1,100	ex. w.	$1,980	00
" "	78	"	108	9,200	"	1,300	"	1,196	00
" "	58	"	70	820	"	400	"	32	80
" "	140	"	156	1,265	"	500	"	632	50
" "	212	"	252	8,000	"	1,000	"	800	00
" "	315	"	345	8,200	"	700	"	570	00
"	345	"	375	3,650	"	600	"	219	00
629 "	435	"	460	800	"	700	"	56	00
"	465	"	503	3,500	"	800	"	280	00
" "	610	"	647	7,500	"	1,000	"	750	00
" "	669	"	694	4,600	"	600	"	276	00
" "	745	"	779	21,000	"	1,800	"	3,780	00
" "	780	"	810	18,000	B	300	"	540	00
" "	813	824+50		10,000	P. B	400	"	400	00
" "	824+50	"	845	11,200	yds.	1,000	"	1,120	00
" "	845	"	888	22,000	"	700	"	1,540	00
" "	892	"	905	4,200	"	400	"	168	00
" "	904	"	931	10,000	"	600	"	600	00
" "	950	"	971	8,000	"	600	"	840	00
" "	975	"	982	3,000	"	200	"	60	00
" "	985	"	1,025	18,000	"	300	"	540	00
" "	1,061	"	1,079	4,000	"	600	"	240	00
" "	1,099	"	1,125	13,000	"	1,500	"	1,950	00
" "	1,134	"	1,156	6,500	"	900	"	580	00
" "	1,158	"	1,180	4,500	"	1,200	"	540	00
" "	1,188	"	1,260	4,000	"	500	"	200	00
" "	1,292	"	1,310	1,000	"	700	"	70	00
" "	1,325	"	1,340	2,000	"	300	"	60	00
" "	1,432	"	1,448	1,200	"	700	"	84	00
" "	1,490	"	1,520	11,000	"	1,200	"	320	00
" "	1,524	"	1,544	5,000	"	900	"	450	00
" "	1,590	"	1,610	2,000	"	500	"	100	00
" "	1,641	"	1,663	1,200	"	1,100	"	131	00
" "	1,665	"	1,684	2,600	"	500	"	130	00
" "	1,685	"	1,708	800	"	600	"	48	00
" "	1,710	"	1,735	1,100	"	500	"	55	00
" "	1,940	"	1,952	3,000	"	200	"	60	00
" "	1,985	"	2,000	3,000	"	500	"	150	00
" "	2,030	"	2,050	2,500	"	400	"	100	00
" "	2,110	"	2,175	9,500	"	1,800	"	1,610	00

Between sta.	2,250	"	2,273	2,200	"	500	"	110 00
"	" 2,300	"	2,340	1,250	"	1,000	"	125 00
"	" 3,435	"	3,460	3,000	"	600	"	180 00
"	" 3,480	"	3,500	3,000	"	700	"	210 00
"	" 3,480	"	5,000					3,014 00
Total								27,537 30

SATURDAY, 6*th November*, 1858.

Moses Kneeland, being duly sworn, says:

The defendant Chamberlain produces a contract dated 20 January, 1857, the tunnel modification thereof attached thereto, dated 30 April, 1857, of which modification a copy is hereto annexed, 630 marked H; a contract dated 20 November, 1856; one dated 26 September, 1857, being the lease, so called, and another contract of the same date—copies of which are attached to the answers or to some of them, filed in this cause. The execution of the papers is admitted, except as to the tunnel modification, in regard to which the complainant's counsel admits the genuineness of the signatures of Selah Chamberlain and Edwin H. Goodrich.

Edwin H. Goodrich was vice president of the La Crosse and Milwaukee Railroad Company on the 30th day of April, 1857, when the tunnel modification contract, here produced, was executed, I did not see the contract executed. I referred to the meeting of the executive committee. I left the next day after that meeting. In April, 1857, the executive committee of that company was composed of Byron Kilbourn, Edwin H. Goodrich, Garret Vhit, Samuel Brown, and myself. The subject of making a contract for the tunnel was considered in the executive committee in the last days of April, 1857, Mr. Goodrich, Mr. Vhit, and myself. Mr. Woodward and Mr. Chamberlain were present. The executive committee directed a tunnel to be made. I dould not tell you all the details. One particular point as to the price arose. The price per yard for tunnel work was the principal thing under discussion. I recollect there being talk about the sinking shafts, packing, and anchoring; but there was more discussion on the tunnel work itself.

These prices named in the modification contract were the prices agreed upon. They were the prices named in his proposition for the original contract. We then thought we should not have to tunnel it, but Mr. Kilbourn and Mr. Woodward made up their minds that a tunnel would be necessary, and Mr. Kilbourn wrote in to Mr. Goodrich to that effect. Mr. Goodrich called the executive committee together. Mr. Woodward had a sort of an estimate; he had estimated the tunnel work at $3 a yard. Mr. Chamberlain said he could not do it for that, and would not take it. I asked Mr. Woodward how that estimate was got up. He said by him and Mr. Kilbourn, when they were out at the tunnel; that they did not include any profit. Mr. Chamberlain wanted $6 a yard. We proposed in the discussion to add to the estimate $1 a yard, making it $4 a yard. He finally said that his last and best proposition would be $5 a yard for the tunnel work un-

der his old proposition. I think the executive committee were in session two days. We advised about it with Mr. Woodward, and finally deemed it advisable to take that offer. There was a good deal of discussion as to what material might be in the ridge, whether shell rock or openings in the rock, or something else. We agreed, finally, upon the price named in the contract, $5 per yard, in consideration of the risk he took in the material.

The executive committee passed a resolution ordering the contract to be entered into. I should consider this as substantially the
631 contract ordered to be executed. I think these are the prices agreed upon. I never saw the tunnel modification contract before. The executive committee directed Mr. Goodrich to execute the contract.

When the contract was made with Mr. Chamberlain, in January, 1857, for completing the road to La Crosse, he submitted a proposition for doing the work. Mr. Cook (C. D. Cook & Co.) also submitted a proposition.

Question. Whose was the best?

(Objected to as immaterial.)

Answer. Mr. Chamberlain's. The principal difference was in chairs and spike, which Mr. Cook did not propose to furnish.

I think his proposition was $11,900 per mile, without the chairs and spike. Chamberlain's included the chairs and spike.

Then there was a difference in what we call a drawback in the rock and earthwork in Chamberlain's, and there was none in Cook's proposition. I think also that Cook's haul was less than than Chamberlain's. As a whole Chamberlain's was the best proposition for the company, I thought.

I had no interest in Chamberlain's contract, either for the tunnel or for the western division.

(Mr. Brown, complainant's counsel, objects to the testimony of this witness, on the ground that he is charged by the bill with being interested in Chamberlain's contract, and on the ground that he is interested therein.)

Cross-examined:

I have been connected with the La Crosse road since the winter of 1854—January or February, 1854—and before that with the Fond du Lac road, from the organization of the Milwaukee, Fond du Lac, and Green Bay Railroad Company.

I think I was one of the committee who negotiated the consolidation of the Fond du Lac and La Crosse companies.

Question. How much stock did you have in the Milwaukee, Fond du Lac, and Green Bay Railroad Company four months prior to the consolidation?

(Objected to as immaterial.)

Answer. I don't know precisely how much I had.

Question. Did you increase the amount of stock you held four months prior to the consolidation, up to the time of consolidation?

(Objected to as immaterial.)

Answer. I presume I did.

Question. Did you ever become the owner of one hundred shares of stock, issued to Cook or *or* Cook and Sherwin?

(Objected to as immaterial, so far as Chamberlain is concerned, and incompetent as to the other defendants.)

Answer. I think I did.

Question. From whom did you receive the certificates of stock?

(Objected to for the same reason as before, and also that it is not proper cross-examination.)

632 Answer. I think I received them from C. D. Cook. It was either from him or James Kneeland. I think from C. D. Cook.

Question. How did you receive it?

(Objected to for the same reasons.)

Answer. From one of them personally.

Question. What consideration did you pay for it, and when and how?

(Objected to for the same reasons.)

Answer. I will produce Messrs. Cook & Sherwin's receipt in answer to that question. The body and signature are both in the handwriting of C. D. Cook. This receipt was actually given on the day it bears date, the tenth of October, 1853. At the time of taking the receipt I gave him some money and my due bill for the balance. I paid him in all six thousand dollars in money for that stock. I think he made me an allowance out of that for a service I performed for him. I went out to Madison and got a bill through for him. I think, however, the principal part was money. The going out to Madison was in connection with the consolidation bill. That was in January, 1854, I think. He allowed me, I think, about $200 or $300 for going out to Madison. I think I paid him about $1,000 in money, and about $5,000 in my due bill. I don't remember exactly. I don't recollect whether I paid him in bills or a check. I think there was a $400 check, and the rest was in bills. I think the check was on Townsend & Finkler. It must have been there or on Kneeland & Hulls. I can't tell how I paid the remaining $5,000, for which I gave my due bill. This paper, marked G, is a true copy of the receipt I have mentioned.

(Paper produced marked G, and hereto attached.)

I did not know, at the time I received that stock, that James Kneeland owned that stock, or that C. D. Cook neither owned nor claimed any interest in it. I was informed by James Kneeland that he had a contract with Mr. Cook to cash the securities, but I think it was after that date.

I think I first saw Mr. Selah Chamberlain, to know him, in the fall of 1854. I was in the board of the La Crosse company, which gave him and Alden his contract the first time. I was in the board at the time they declared Mr. Cleveland's contract void.

(All the testimony subsequent to the answer of the last question is objected to for immateriality, and is taken subject to that objection.)

MONDAY, 8*th November*, 1858.

I know James Ludington, one of the defendants in this suit.

Question. Do you recollect the fact of a sale of school lands made by him to the La Crosse Railroad Company some years ago?

(Objected to as immaterial and incompetent.)

Answer. I understood there was such a sale. I was a director at the time, and so was he. I think I did not vote for the
633 purchase, and did not know anything about it at the time. I could not state how much the board gave him for them. I can't state. I have no knowledge whether any other persons than Ludington were interested in the purchase of those lands from the State, or in the sale of them to the company. I think this was about 1854, but I am not positive. I did not have much to do with the company then. I afterwards became the owner of some of those school lands, about eleven hundred acres in Crawford county. I understood from Dr. Judd, the president, the price; but I do not know otherwise. I gave for the company's interest in the land 123$\frac{74}{100}$ acres of land in Racine county, free of encumbrance, worth about $2,000 at that time. I do not know who is nowthe owner of that land, but I suppose the company is. I do not remember the description of it. These are all the lands I purchased from the company. Some of them may be in Bad Axe county. Mr. Dawe purchased quite a large amount of those lands. A man in Hartford took some; a man in Ohio, Mr. Whittemore, took some in payment of a debt due him; Mr. Mariner took some, I think. I think they were all sold or exchanged for other lands. I don't know that any other director bought any. I think E. C. K. Garvey bought some, and Crampton also. When I took mine the understanding was that I might exchange them for others that I should select; but before I got a chance to make the selection they were nearly all sold.

(The foregoing evidence, since the last question, is all taken subject to the defendant's objection for immateriality.)

I don't know that I at first favored Cook's proposition any more than Chamberlain's. I don't think that just previous to a meeting of the board, or during such meeting, Mr. Alden asked me to go out and talk with him.

Question. Do you know, either of your own knowledge or from any facts or circumstances, whether Mr. Chamberlain gave to any member of that board, directly or indirectly, any gratuity, sum of money, or thing, either in action or possession, either as a recompense for having aided him, or as an inducement to aid him in getting that contract, or for any consideration growing out of that contract?

(Objected to as irrelevant and immaterial, and not proper cross-examination.)

Answer. I don't know that I have any knowledge or recollection of any such transaction.

Question. Has any director of the La Crosse Railroad Company, to your knowledge, had any interest, direct or indirect, either in the contracts which Chamberlain had with that company, or in any of

them, or in the profits of such contracts, or in the results or moneys received from such contracts?

(Objected to for the same reason.)

Answer. None to my recollection. I don't believe there was any.

634 Question. Have you, yourself, ever been the owner of any note, bond, or other security; or have you had in your possession any note, bond or other security, issued or given by the La Crosse Railroad Company, under or in pursuance of any contract with Chamberlain?

(Objected to for the same reason.)

Answer. That is a pretty broad question. I don't know what bonds, stocks and such things he might have had at some stage. I don't know but I have had such, and I don't know that I have.

Question. Have you ever received from him or from Mr. Goodrich anything of that nature, issued to him under any of those contracts?

(Objected to for the same reasons.)

Answer. I don't think I have, nor from any other person.

Question. Have you ever yourself directly, or through the agency of a third person, sold or disposed of any stocks, bonds, notes, or other securities, issued by the company under the contract with Chamberlain?

(Objected to for the same reasons.)

Answer. I can't say. I might, or might not. I have no recollection of it now.

Question. Do you recollect the last report made by the company before the land grant?

Answer. I think there was a report made in the spring previous to the land grant, and one afterwards.

I think the report previous to the land grant was got up by Messrs. Kilbourn and Strong. I can't say whether I as a director voted for it. I presume the report represented, according to my understanding, the situation of the company at that time. I recollect that after the land grant a report was also made, about January, 1857. I presume I voted for the report, but I can't say whether I did I presume it then represented the condition of the company, as I then believed. I recollect I then thought the appraisal of the lands too high, but I had no knowledge about them. I can't say whether the change in the contract with Chamberlain in regard to a tunnel was reported to the board; I have no recollection about it; I was away. On reflection, I wish to correct my statement as to Kilbourn and Woodward's estimate of the cost of the tunnel work. I think it was $3 50 or $3 75, instead of $3. Mr. Woodward reported the price. Mr. Kilbourn was then at St. Paul. Mr. Woodward was appointed chief engineer of the road in February or March, 1857, according to my best recollection. He was first employed as a division engineer immediately after procuring the grant. I don't think he was engaged on any road when we appointed him. I don't think he was appointed at Chamberlain's instance; I think it was at Farwell's instance. I don't know whether or not he had ever been on a road which Chamberlain was connected with. I think Mr. Woodward, after he was appointed chief

635 engineer, had charge of the western division of the road.

Before that, Mr. Kilbourn was chief engineer, and before that, Mr. Sill.

Question. What amount of the bonds of the company, after the land grant, were issued to persons not directors of the company, and what amount to each director?

(Objected to as immaterial and irrelevant.)

Answer. I can't say that any issue was made to outside parties or directors. I can only say that a million of bonds were issued for charter expenses, for right of way, depot grounds, and other expenses. I don't think any were issued to directors or others. I think the executive committee appropriated of bonds of that issue for services, and indorsing the company's paper, &c., to Charles E. Jenkins $25,000; to Moses M. Strong, to Edwin H. Goodrich, and Moses Kneeland, each $25,000. This is all that I recollect. The bonds that I received were received for extra services, and to apply in part payment for indorsing and bonding iron for the company. Those bonds are now in the hands of the company cancelled, and have been for some time. I suppose I returned them some time last winter. I have now a claim against the company for indorsing for it, and bonding its iron. There was before that time an appropriation to me in stock of $2,000 or $3,000 on account for indorsing. My account against the company is over $40,000. I have, I think, been on over three millions of paper for the company. I was not here when the judgment was entered in favor of Chamberlain; I was in New York. I think I was here at the time of the purchase by the company of Kilbourn, of what was called "the canal lots." I think that was in 1856; I may be wrong, but that is my recollection. I don't know that I can state the amount; I think it was $50,000 or $60,000; it may be more or it may be less. I think I was in the board at the time that the $50,000 were voted to Mr. Kilbourn. It was passed by the board.

I never, to my recollection, stated to Frederic J. Gates, of Albany, after the judgment was entered in favor of Chamberlain against the La Crosse Railroad Company, that the whole amount of it was not due to Chamberlain from the company, or anything to that effect.

I have been on all the bonds of the company for all the iron from Milwaukee to La Crosse.

MOSES KNEELAND.

E. W. Woodward:

Interrogatory. What is your profession?

Answer. I am a civil engineer. I reside in Warren county, Ohio. I have been engaged in that profession for thirteen years. I was chief engineer of the La Crosse railroad from February, 1857, to October 1st, 1858. I know of Mr. Chamberlain, one of the defendants, having contracts on that road. The contract on the certain division
was for ballasting between Beaver Dam and Portage City.
636 That on the western division was for the entire construction,
with the exception of the iron rails, which were to be furnished by the company. As chief engineer I estimated the work done by him on the eastern division, under his ballasting contract. There is

a copy of the estimate now shown to me, and marked "A." This is the final estimate, and shows, besides the ballasting proper, the allowance made by engineer and the executive committee for pile bridging at Fox lake, and afterwards filling in the same with earth. The work estimated in the final estimate was performed by Mr. Chamberlain. There was a sink-hole at Fox lake which required a large amount of earth to fill in. As chief engineer I made monthly estimates of Mr. Chamberlain's work on the western division. I made an approximate final estimate on October 1st, 1857. I now hold a copy of that final estimate here; it is marked "B;" it was made at the request of Mr. Palmer, who was then, I believe, vice president. This request was made by him, I should think, about four days previous to 1st October, 1857.

What directions did Mr. Palmer give you at that time?

(Objected to by Mr. Finch, solicitor for complainant, as irrelevant and immaterial.)

Mr. Palmer told me to make an estimate as accurately as I could in the time given to me, and by all means keep it within the amount performed. Mr. Palmer, at a second interview, charged me the same thing again.* I proceeded and made the estimate upon such returns as had previously been made by assistant engineers, and my own knowledge of the condition of the road. Those returns, and my own knowledge of the work at the time, were not and could not well be sufficiently recent to enable an engineer to make an approximate estimate, the work being carried forward so fast at that time that very few days would suffice to materially change the amount of work performed. I intended the estimate to be a little below the amount of work performed, and I think it really was so. Subsequent examinations have confirmed me in this belief. The item in exhibit "B," of excavations at the tunnel approaches, was erroneous, for this reason: A very heavy force of men was at work there at the time, and the amount forwarded me by the assistant engineer as done, was so much larger than that about a month before, that I was afraid to trust it in making an estimate under the instructions I had received from Mr. Palmer; subsequent careful examinations, however, have shown that the estimate was very much too small. I have since made a re-estimate of all of the work done in this estimate of October 1, 1857, (marked "B,") or the work intended to have been included therein. The railroad company appointed Wm. R. Sill to make, with the assistance of myself, a re-estimate of all such work. We proceeded to make the remeasurements and estimates, with the aid of all
637 the field-notes and cross-sections connected with the work. We went over the line, remeasuring carefully all items of any considerable amount, and those of lesser amount were tested, and compared by the notes in the construction-books. In some instances Mr. Sill was obliged to rely upon my statements as to where and how much the work was done on October 1st, 1857. These statements made to him were in every instance correct.

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*The answer of witness to the interrogatory objected to ends at the asterisk.

(The witness is now here shown by defendants' counsel a paper, marked C, and proven, 1st October, 1858, before Winfield Smith, master and commissioner.)

Witness continues. This paper C is the duplicate original return made by myself and Mr. Sill, and shows the result at which we arrived. It shows the amount of work done by Mr. Chamberlain up to October 1st, 1857, and the prices under the contract. In relation to the rock and extra haul, an explanation should be made. The earliest approximate estimates made from the profile of the road justified the belief that the quantities would exceed the limit per mile named in the contract, and the contrary to this was not ascertained until after the making up of the estimate, dated October 1, 1857. Much work having been done by the chief contractor, Mr. Chamberlain, himself, and which was not estimated monthly so carefully as was the work of his sub-contractor, will show the reason why precise knowledge was not had of this matter at the time. Had the quantities exceeded the limit, the contract price for the work then would be one dollar per yard. Upon full final examination, the quantities were found to be very little below the limit of the contract; therefore seventy-five cents per yard was the price to be allowed for the rock. The estimate for haul, of October 1, 1857, was also larger than it should have been; for, while the quantities were believed to be above the limit of the contract, it was the determination of the engineer to consider all excavations as being into embankment, and to deduct a like amount of embankment from the gross number of yards of work performed in accordance with the stipulation in the contract, and thereby avoid, as far as possible, excess of earthwork; for it was cheaper for the company to pay for its being hauled than to pay the price per yard for excess of earthwork.

Upon ascertaining that the quantities were really a little below the limit, I, as engineer, assumed that the contractor should be paid for nothing but what was actually hauled over five hundred feet. Upon this basis the Woodward and Sill estimate is true and correct.

The item of grading, bridging, and masonry, proportionally done beyond New Lisbon, in the estimate dated October 1st, 1857, was very much too small; it was the intention to keep it pretty low, and this way of arriving at that item was very materially changed upon advice and mature deliberation.

In the approximate estimate, of October 1st, this item was arrived at by comparing the work done between New Lisbon and La
638 Crosse with work to be done between the same points. The estimate of Sill and Woodward comprises the work done between New Lisbon and La Crosse, and finds the proportion that bears to the work on the entire line included under the contract. This was, no doubt, the proper way of ascertaining the proportion of work done, for it at once establishes a pro rata value of the work performed. Some of the smaller items of extra work, such as road and fireman crossings, bridges, cattle-passes, and changing highways, the excavations of foundations and timber in some, were such as no one could well understand the real value of, except in charge at the time of the

construction. Mr. Sill had to rely, in a great measure, upon my assurances in relation to them. The estimates for these items I know to be not more than a fair value for the work. The item for "bank-wall" is correct; I know this from my personal measurement.

The original contract between Mr. Chamberlain and the company contemplated a through cut at the dividing ridge. We, the engineers, found that to make a tunnel would be much cheaper. Upon informing the company of this fact, Mr. Kilbourn proceeded with me to the dividing ridge, and it was then determined by him to build a tunnel, and being on his way to St. Paul's, he wrote a letter to Mr. Goodrich, who, I believe, at that date, was vice president. The letter was carried to Mr. Goodrich by myself. It contained instructions from Mr. Kilbourn to Mr. Goodrich to get the executive committee together, and change the contract accordingly. It had also recommendations what prices to pay; that is, about what he thought it ought to be done for. I have forgotten the precise prices, but recollect that when Mr. Kilbourn showed them to me I said to him that no one who had ever made a tunnel would take it for those figures. Upon the executive committee applying to Mr. Chamberlain, I believe he refused to do the work at the price mentioned in Mr. Kilbourn's letter. I went before the executive committee; Goodrich, Kneeland, and Vliet were present—the latter during most if not all the time. They mentioned to me what Mr. Chamberlain offered to do the work for, and asked what I thought of it. I told them there was risk about all that kind of work; that the tunnel price was low, considering all risks; that the approach price was high. I think, also, that I said, if they could not get it any lower, to let him do it at that price.

While with the executive committee I heard Mr. Kneeland speak of an original bid made by Mr. Chamberlain for tunnel work, should one be required, and said he did not believe that he could get Mr. Chamberlain to do it below that bid. The contract was let to Mr. Chamberlain immediately following this.

Taking the entire tunnel contract, I think it was at a good round price; it was doubtless something more than the work would really cost. I have seen contracts let at a higher price, and a good many at a lower price. Tunnel contracts are very risky contracts.

639 The change from through cut to a tunnel was a great saving to the company. It is my opinion that it would be a saving of hundreds of thousands of dollars.

At the time of making the estimate of October 1st, there was an estimate also made for unfinished work east of New Lisbon. This was furnished the company in connection with the other estimate. Here is a copy of that estimate, which I now hold, marked D.

Cross-examined by Mr. Finck:

I have known Mr. Chamberlain since 1851; I think I have never been in his employ at all; I have acted as engineer upon one road where he had a contract.

I have been as intimate with him so far as engineer and contractor

on the same road, whose business brings them together. Since the commencement of this suit I have asked Mr. Chamberlain concerning it.

I have not had frequent conversations with him relative to the subject-matter of the suit; he mentioned to me that he wanted me as a witness; he first mentioned this soon after the commencement of this suit; I don't think he ever stated the facts or subject-matter which he expected to prove by me; no one in his behalf has ever talked with me except his counsel; I think Mr. Emmons called me three times in all, and gave me some points whereon he expected my testimony.

I met Mr. Emmons but once before I made the affidavit filed in this case.

I don't know that he specially directed my attention to facts, but inquired whether my estimates could be substantiated and explained by detailed explanations and notes. I don't remember that he called my attention to special points; I think he had my estimates before him at some of those conversations; I don't remember any particular items to which he called my attention. At our first interview I think he had no other than the estimate of 1st October, marked A.

I don't recollect that Mr. Emmons called my attention to any items on that estimate, but I told him that changes would have to be made in it. This was a few days before my affidavit was made.

In March, 1858, Mr. Sill and I were appointed a remeasurement; it may have been April.

Mr. Palmer gave me no reasons why that remeasurement should be particularly accurate; he told me to be sure and be within the amount, but gave me no reasons. I had at that time the profiles of the road in my possession as chief engineer; I have not seen the profiles for four or five months. When I last saw them, part of them were in the company's engineer's office at Milwaukee, and part of them Mr. Staughton had in his possession on the line; they
640 consist of twelve or fifteen small rolls of thick drawing paper; they are not labelled, except in pencil from point to point, where they reach.

I drew part of them myself, and superintended the getting up of all of them. These profiles referred to are the profiles of the western division. I think I never saw the profiles of the road from Beaver Dam to Portage City. In making up the estimate signed by Sill and myself, we used the original field-note books, the cross-section notes, and our own through remeasurement notes of rock excavation, tunnel approach excavation, and comparison notes to test field-notes. We made this estimate upon the strength of all these notes.

We completed this estimate, I should think, about the 20th March, 1858.

Mr. Staughton had the field-notes and papers, from which estimate was made in his possession.

Mr. Palmer called on me three or four days before the first of October.

On the first of October, 1857, about five or six miles of the road was wholly completed beyond Kilbourn City. We did not measure actually the distance, but knew it without measuring from the section stakes which were driven. It is about seventeen miles and a half from Portage City to Kilbourn City.

It is about twenty-five miles and a half from Kilbourn City to New Lisbon.

We estimated forty three miles of main line.

The track had not been laid more than five or six miles beyond Kilbourn City.

Portions of the land between Portage City and Kilbourn City were quite level—say, about one-half; the rest was more rolling, some of it pretty rough. There was some very heavy work between the two places; we had no cut over forty feet; they were short cuts. Where the heavy cuts were, the soil was clay; there was considerable haul at several points; I could not say how far it would average. We got at the estimate examination on the ground, and used the profiles. We got at the amount of haul by looking and seeing; without the original notes of the excavations from whence the earth was taken, and some observation and knowledge of the way in which the work was performed, it would be very hard to make an accurate estimate of haul. By the original notes I mean the level notes of the line of location, division books, and cross-section notes.

Almost constant observation of the work as it was done is the basis from which I would make the estimate of the haul. If the field-notes and the note-books were not correct, the estimate for haul would not be accurate. I cannot from recollection state the points at which the haul occurred. My principal office was at Milwaukee. I was out upon the line of the road nearly all the time. I was on the line between Kilbourn City and Portage City during the progress of the work; at work of any importance as often as once or twice a
641 week, and sometimes stopped on a few miles of work for a whole week. There was much ballasting done between Portage City and Kilbourn City; there was not of material suitable for ballasting but a small portion of the distance along the line. The chief use of ballasting is on account of frost, to get good bed of the right kind of material. The character of the soil between these points was sandy, soil inclining to quicksand.

There was a good deal of grubbing between Portage City and New Lisbon, at different points; none of it was the heaviest grubbing; most of it was done in the vicinity of Kilbourn City, the most of it. I have seen heavier grubbing than that was; I can only state the grubbing was heaviest on the eastern half of the road.

The grubbing on the whole line of the road might be called only middling.

The rock excavation was between Portage and New Lisbon; it was done in the summer and fall of 1857; the points where it occurred are particularly specified in a schedule accompanying my affidavit filed in this cause. I as chief engineer superintended the division engineers, (two in number, Mr. Staughton and Mr. Howell;) had a

more immediate charge of setting stakes and taking levels; the work was chiefly done under the immediate management of certain sub-contractors, most of whose names I do not now recollect; it was sandstone excavations; I make no distinction between sandstone and sand-rock; a piece of loose rolling sandstone of great age is probably somewhat harder than its parent rock; it was pretty easy working this sandstone; I could not tell how much was averaged a day on the work; they could not take it out without blasting; it was a very good easy rock to move; we had actual notes of each cut, and width, and height of the rock taken out; those notes were taken firstly by the division engineers, afterwards I measured each cut myself.

We take first the grade of the road at each hundred feet station; we take the cutting at the centre line on each of these stations; we take the side distances, the width of the work out from these centre stations, and the cuttings at the points so measured, too; these are sufficient to make full calculations of the number of yards; I took these measurements myself; they were taken at various times, occupying on the whole, I should suppose, as much as two weeks of connected time. In making the estimates of Mr. Sill, we took such notes as would quickest test the accuracy of former notes; if any inaccuracy however slight was found, we would then make a thorough measurement of the cut, which actually amounted to a remeasurement of the whole work; we had the estimates and books of the sub-engineers who were there at the time.

The bank wall referred to by me was built near Kilbourn City, within the city; it was of sandstone; a bank wall which contained 2,750 yards of the amount estimated, was built at the deep gorge near Kilbourn City, the bottom of it some few feet deep in the 642 river; the embankment of clay was placed against it; the embankment was 90 feet high; after a rain it split in the middle; 20,000 yards of embankment, together with the bank wall, slid into the Wisconsin river.

I took measurements of the bank wall enough to know that the measurement was correct; I cannot remember its dimensions; but the amounts were ascertained, of course, by calculations from its length, breadth, and thickness; I saw two men measure its length and breadth before it was done.

Filling at Fox Lake.

I don't know who superintended the building of the pile-bridge at Fox lake; there is an item of twenty thousand dollars or upwards in the estimate, which is for building the pile-bridge at Fox lake, and filling in earth at the same place where the bridge sunk; there had never been any allowance for building the pile-bridge; much of the filling in was done in the winter, and large quantities of stone were hauled costing a greater than a usual price for hauling, and at a meeting of the executive committee, the matter was brought up; I stated then as near as possible the amount and character of the work; the committee decided to make the allowance named, and instructed me to enter it with the ballast estimate.

We never knew just how deep the *the* mud was; thirty-five feet piles were gone out of sight. It would be impossible to tell how many thousand yards were put into the sink-hole; much of it was taken from points that could not be measured in the winter; many train-loads of frozen earth were blasted and hauled in. I was up there perhaps twice a week. I made no general estimate of the filling in at Fox lake. The item of $20,000 and a little upwards for extra work was allowed by the executive committee, under the circumstances, as I have before stated.

The length of the tunnel is little more than a quarter of a mile; the height is 19 feet about. I could not tell how much was taken out of the tunnel. I left Mr. Staughton to close up the work. I got at the estimate of the approaches by cross-sections, taken in the same manner as was mentioned in the case of rock. Mr. Staughton made the profile along there and the original surveys.

In making estimates, I relied chiefly on field-notes and cross-sections.

The extra work is chiefly the rock tunnel approaches and haul. Most of the papers, notes, &c., are in the railroad office in Milwaukee, I believe.

Where I have stated in my direct examination, as to circumstances of which I informed Mr. Sill in making our estimates, I relied upon our field-notes and profiles and general knowledge of the work. Nearly all of the field-notes were taken by the assistant engineers.

643 Monthly estimates of the work done are usually returned by the assistant engineers to the chief engineer; upon those returns the general monthly estimate is made.

I know that the work that purports to have been measured as work done before the first of October, was done before that time, and no part of it has been performed since.

We had the line staked off into 100 feet distances, with a stake at the beginning and end of every cut. These are all numbered, and by their position we can at any time ascertain the position of any portion of the work.

Re-examined by Mr. Emmons.

In the item at Fox lake pile bridge there is included and covered a former two-thirds estimate of piling alone of near $5,000, which if charged to him in his account with the company would make the $20,000 and upwards item correct.

Further this deponent saith not.

EZEKIEL W. WOODWARD.

UNITED STATES OF AMERICA, *District of Wisconcin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the third day) of January, A. D. 1859; present, the Honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-first day of said term, to wit, on the eleventh day of February, A. D. 1859, the following proceedings were had, to wit:

Decree.

NEWCOMB CLEVELAND *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Selah Chamberlain.	In equity.

This day came the parties by their counsel, and on due consideration of the pleadings, proofs, and arguments of counsel, it is thereupon ordered, adjudged, and decreed by the court, that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal property, (except such as is used on the Milwaukee and Watertown division of
644 said railroad,) and leased to said Chamberlain their said railroad and appurtenances, rights, franchises, and privileges, be, and hereby is, vacated, annulled, and made void, so that the same shall not hereafter be of any force or effect whatever. And that the said Selah Chamberlain be, and hereby is, perpetually enjoined and restrained from using, managing, running, controlling, or meddling with said railroad, or the rolling stock, personal property, or any of its appurtenances or franchises, or anything connected therewith, under or by virtue of said article of agreement. And it is further ordered, adjudged, and decreed by the court, that the judgment of the said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company, entered in this court on the second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon, be, and hereby are, vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever. And it is further ordered, adjudged, and decreed by the court, that the said defendant, Selah Chamberlain, pay the costs to be taxed, so far as they accrued in this proceeding against him, and that he pay the same within twenty days, or in default thereof an execution be issued against him for the same.

And as the lease and assignment of the said company to D. C. Freeman has expired by its own limitation, it is further ordered, adjudged, and decreed by the court, that the defendant, D. C. Freeman, pay the costs to be taxed, so far as they accrued in this proceeding against him, within twenty days, or in default thereof an execution be issued against him for the same. And it is further ordered, adjudged, and decreed by the court, that the La Crosse and Milwaukee Railroad Company pay the costs to be taxed, so far as they accrued

in this proceeding against it, within twenty days, or in default thereof an execution be issued against it for the same.

And it is further ordered, that reference be and hereby is made to a master of this court, to ascertain and report the annual income os the several lots described in the bill as having been conveyed to Mosef Kneeland and James Ludington from the time of their said purchase, together with a statement of the interest thereon. And also to ascertain and report the amount of the actual cost of permanent improvements made on said lots by said Kneeland and Ludington, together with interest thereon; and also the amount of liens and taxes on said lots that have been paid by said Kneeland and Ludington, or by C. D. Nash for them, together with interest on the same. And that this bill be retained for further decree and proceedings after the coming in of said report.

It is ordered by the court, that in case of appeal by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, or either of them, a bond to authorize a supersedeas shall be given and
645 filed, with sufficient sureties, to be approved by the court or judge, in the penal sum of one hundred and fifty thousand dollars.

A. G. MILLER.

Appeal.

FEBRUARY 14, 1859.

This day came the defendant, Selah Chamberlain, by his counsel, and prayed the court for an appeal to the Supreme Court of the United States, and presented his bond to the complainant, Newcomb Cleveland, with James B. Cross, Samuel B. Scott, Clark Shepardson, and Samuel Hale, as sureties, in the penalty of one hundred and fifty thousand dollars, conditioned that if the said Selah Chamberlain shall prosecute said plea to effect, and answer all damages and costs if he fail to make his plea good, then the said obligation to be made void, else valid, which said bond is as follows:

Bond for appeal.

Know all men by these presents, that we, Selah Chamberlain, of Cleveland, Cuyahoga county, Ohio, principal, and Samuel Hale, of Kenosha, in the State of Wisconsin, James B. Cross, Samuel B. Scott, and Clark Shepardson, of Milwaukee, in said State, as sureties, are held and firmly bound unto Newcomb Cleveland, of Waukegan, State of Illinois, in the full and just sum of one handred and fifty thousand dollars, to be paid to the said Newcomb Cleveland, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twelfth day of February, in the year of our Lord one thousand eight hundred and fifty-nine. Whereas lately at at a term of the district court of the United States for the district of Wisconsin, begun on the first Monday of January, one thousand eight

hundred and fifty-nine, in a suit depending in said court, between Newcomb Cleveland, complainant, and Selah Chamberlain, impleaded with the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, and James Ludington, and Dewitt C. Freeman, defendants, a decree was rendered against said Selah Chamberlain; and the said Chamberlain having obtained an allowance of an appeal therefrom, and an order for a supersedeas, and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said Newcomb Cleveland, complainant, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now the condition of the above obligation is such, that if the said Selah Chamberlain shall prosecute said appeal to effect, and
646 answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.]	SELAH CHAMBERLAIN.
[SEAL.]	SAMUEL HALE.
[SEAL.]	J. B. CROSS.
[SEAL.]	C. SHEPARDSON.
[SEAL.]	S. B. SCOTT.

Sealed and delivered in the presence of—
A. G. MILLER.
N. N. EMMONS.

DISTRICT OF WISCONSIN, *ss:*

Samuel Hale, being sworn, doth say that he owns property in his own in this State, of the value of forty thousand dollars over and above his debts, and property exempt from execution.

SAMUEL HALE.

Sworn and subscribed the 12th of February, 1859.

A. G. MILLER, *Judge.*

DISTRICT OF WISCONSIN, *ss:*

James B. Cross, being sworn, doth say that he is the owner of property in his own name, in this State, of the value of fifty thousand dollars over and above his debts, and property exempt from execution.

J. B. CROSS.

Sworn and subscribed the 12th February, 1859.

A. G. MILLER, *Judge.*

DISTRICT OF WISCONSIN, *ss:*

Clark Shepardson, being sworn, doth say he is the owner of property in this State, in his own name, of the value of fifty thousand

dollars over and above his debts and liabilities, and property exempt from execution.

CLARK SHEPARDSON.

Sworn and subscribed the 12th February, 1859.

A. G. MILLER, *Judge.*

647 DISTRICT OF WISCONSIN, *ss:*

Samuel B. Scott, being sworn, doth say that he is the owner of property in this State, in his own name, of the value of twenty-five thousand dollars over and above his debts, and property exempt from execution.

S. B. SCOTT.

Sworn and subscribed February 12th, 1859.

A. G. MILLER.

Appeal allowed.

Whereupon it is ordered by the judge that the said appeal so prayed for be and is allowed, and that the said bond be and is approved, and that further proceedings on said decree against Selah Chamberlain be, and hereby are, superseded, and that a citation to issue.

Discontinuance as to B. Kilbourn and others.

And afterwards, to wit, on the twentieth day of July, A. D. 1860, came the complainant, by his solicitor, and filed his discontinuance as to Byron Kilbourn, Moses Kneeland, James Ludington, and Ephraim Mariner, as follows:

U. S. district court for the district of Wisconsin.

NEWCOMB CLEVELAND
v.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, and Selah Chamberlain.

To the clerk of U. S. district court:

You will enter a discontinuance in the above suit as to Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Ephraim Mariner, and as to them let the bill be dismissed.

WM. P. LYNDE,
Solicitor for Complainant.

February 12th, 1859.

And same day came the parties by their solicitors and filed their stipulation, as follows:

648 *Stipulation as to transcript.*

The district court of the United States, for the district of Wisconsin.

NEWCOMB CLEVELAND
v.
SELAH CHAMBERLAIN, impleaded with the La Crosse and Milwaukee Railroad Company and others. } In equity.

It is hereby stipulated and and agreed between the solicitors of the respective parties herein, as follows: That in making up the record herein for the Supreme Court, on said Chamberlain's appeal, the clerk may dispense with schedules annexed, and referred to in the original answer of the defendant, the La Crosse and Milwaukee Railroad Company, for the reason that these are annexed and referred to in the answer of the defendant, Chamberlain, schedules and papers by way of exhibits of the same identical character and contents as those annexed, and referred to in said company's answer, that is to say:

Schedule "A" in company's answer is the same as Schedule "A" in Chamberlain's. Schedule "B" in company's, the same as "C" in Chamberlain's; "C" in company's, the same as "D" in Chamberlain's; "D" in company's, the same as "E" in Chamberlain's; "E" in company's, the same as "A A" in Chamberlain's; "F" in company's, the same as "B" of Chamberlain's; "G" in company's, the same as "F" in Chamberlain's; "I" in company's, the same as "I" in Chamberlain's; "H" in company's, the same as "G" in Chamberlain's; papers numbered "1," "2," "3," "4," and "5," in company's, same as papers similarly numbered in Chamberlain's; papers "1 *a*," to "8 *a*," inclusive, in company's, contain same matter as paper numbered "5" in Chamberlain's; "Q" in company's, same as "H" in Chamberlain's.

And it is further stipulated that for all purposes the said papers, schedules, and exhibits, annexed and referred to in the answer of the defendant Chamberlain, may be referred to on the hearing of the appeal in the Supreme Court as those pertaining to the answer of said railroad company; and the incorporation of said papers, schedules, or exhibits, annexed and referred to in said company's answer, into the records is hereby waived.

It is further stipulated and admitted that the defendant, Chamberlain, proved and read in evidence at the hearing the originals of the several documents and papers, copies of which are annexed to his answer as schedules or exhibits; he also proved and read in
649 evidence the originals of the agreement between him and the railroad company, for a new estimate and remeasurement of the word done by him under his contracts, and the report and finding of Sill and Woodward thereunder.

WM. P. LYNDE,
Solicitor for Complainant.
EMMONS & VAN DYKE,
Solicitors for Defendant, Selah Chamberlain.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file and remaining of record in my office, being an exemplification of the record and proceedings in the suit of Newcomb Cleveland against Selah Chamberlain, excepting the testimony, which is according to the directions and stipulations of the solicitors in the case.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this seventh day of August, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the said United States the eighty-fifth.

[SEAL.] J. M. MILLER, *Clerk.*

United States of America to Newcomb Cleveland, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to the prayer of an appeal in the district court of the United States of America for the district of Wisconsin, wherein Selah Chamberlain is appellant, and you are appellee, to show cause, if any there be, why the decree passed against the said Selah Chamberlain should not be reversed, and why speedy justice should not be done to the parties in this behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this fourteenth day of February, in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence the eighty-third.

A. G. MILLER,
Judge of the District Court for the Wisconsin District.

650 Served on the within named Newcomb Cleveland, by showing him this citation, and delivering him personally a copy thereof, this 16th day of February, A. D. 1859.

M. J. THOMAS, *Marshal.*

Subscribed and sworn to before me this 4th day of March, 1859.

J. M. MILLER, *Clerk.*

Service	$2 00
Travel	06
Copy	20
	$2 26

651 Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE & MINNESOTA RAILROAD Company, compl't, *vs.* SELAH CHAMBERLAIN.	Suit to set aside cloud of sense and judgment.

The parties to this cause hereby stipulate that the copy of the record of the cause, Newcomb Cleveland *vs.* The La Crosse & Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, and Selah Chamberlain, in the district court of the United States for said district, in which suit said district court rendered final decree on the 11th day of February, A. D. 1859, as the same was printed in the Supreme Court of the United States on the appeal of said Chamberlain from said decree, and to which this stipulation is attached, may, on the hearing of this cause, be taken to be a true copy of said record, and be read in evidence, the same as the original record, without further authentication. The defendant being at liberty to take any objection thereto, which he could take to the original record, or a duly certified exemplification thereof. This stipulation being made to save the expense of procuring such exemplification. And it is further stipulated and admitted in evidence in this cause on the hearing thereof, that said appeal by said Chamberlain was dismissed by said Supreme Court before this suit was commenced, but for reasons not pertaining to the merits of the decree.

Dated May 9th, 1865.

MATT. H. CARPENTER,
Sol. for Compl'ts.
EMMONS & VANDYKE,
Sol'rs for Defendant.

652 Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company *vs.* SELAH CHAMBERLAIN, and THE MILWAUKEE and St. Paul Railway Company.	Cross bill.
THE MILWAUKEE & ST. PAUL RAILWAY Company *vs.* THE MILWAUKEE AND MINNESOTA RAILROAD Company and S. Chamberlain.	Cross bill.

It is hereby stipulated, that the record in the cause Milwaukee and Minnesota Railroad Company *vs.* Selah Chamberlain, now pending on appeal in the Supreme Court of the United States, may be

considered as in evidence in this cause, subject to all objections as to materiality or competency, and it is admitted that the decree of this court therein was duly appealed from by the complainant therein, which appeal is still pending.

This stipulation is made as a professional courtesy to counsel, and upon the express understanding that neither party shall offer other evidence in this cause, or apply for any stay of the decision of this canse, (which is now submitted to the court.)

Dated Aug. 4th, 1865.

MATT. H. CARPENTER, *Sol., &c.*
EMMONS & VAN DYKE,
Sol's for Def'ts.

653 Circuit court of the United States of America for the ninth circuit and district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law, on the third Monday (being the eighteenth day) of April, A. D. 1864, at the city of Milwaukee, in said district of Wisconsin, president and presiding the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to said circuit, and the Honorable Andrew G. Miller, district judge, Darius C. Jackson, marshal, and A. Scott Sloan, clerk.

On the tenth day of the term, to wit, on the twenty-eighth day of April, A. D. 1864, the following proceedings were had, to wit:

THE MILWAUKEE AND MINNESOTA RAILROAD Company, complainants, *vs.* SELAH CHAMBERLAIN, defendant. } In equity.

Be it remembered that heretofore, to wit, on the twenty-ninth day of June, A. D. 1863, came the said complainant by its solicitor, Matt. H. Carpenter, and filed its bill of complaint against the said defendant, as follows:

Bill of complaint.

District of Wisconsin, in equity.

To the judges of the circuit court of the United States for 9th circuit and district of Wisconsin, in equity:

The Milwaukee and Minnesota Railroad Company, a corporation created by and existing under the laws of the State of Wisconsin, brings this its bill of complaint against Selah Chamberlain,
654 of Cleveland, Ohio, a citizen of the State of Ohio.

And thereupon your orator complains, and says that the La Crosse and Milwaukee company was, from the first day of January, 1850 until the 21st day of May, 1860, a corporation existing under the laws of

the State of Wisconsin, and that during that time its business affairs were managed by a board of directors; that about the 21st day of June, A. D. 1858, the said company was indebted to a large amount of floating debt, accumulated for rolling stock and materials furnished and provided, and labor performed for said company, which was unsecured upon the railroad or other property of said company, and that a large number of farmers along the line of said company's railroad had before then loaned their credit in form of bonds and mortgages to aid said company in the construction and equipment of its said railroad, which bonds and mortgages had been before then used by the said company with a stipulation on its part with and to said farmers to pay the interest that might accrue thereon; and that a large sum of said interest, which said company was bound to pay as aforesaid, had become due, and the said company was unable to pay the same, and proceedings were threatened against such farmers to enforce payment of such interest, and that the said company, for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute, and perfect, ready to be negotiated, sold, delivered, and transferred in payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and year, and payable in A. D. 1888, with interest at seven per cent., payable semi-annually on the first day of January and July in each year, with coupons for said interest to said bonds respectively attached, and that
655 to secure the payment of said bonds and thereby enable said company to use said bonds for the purposes aforesaid, the said company did, on the said 21st day of June, 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust in due form of law, and as it by law had authority to do, to William Barnes, to secure the payment of said last-named bonds, and the interest thereon, in and by which said mortgage or deed of trust, said company mortgaged to said Barnes, trustee, for the purpose aforesaid, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces, or parcels of lands which then were or thereafter might be or constitute the site of the railway, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted or might thereafter constituted, or be a part of, or appertain to said railroad, whether then made or to be made thereafter, and all the engine-house, workshops, depots, and other buildings, and all the other improvements in or appertaining to said railroad, whether then made or built, or to be built and made thereafter, and all and singu-

lar locomotive engines, and other rolling stock, and all the other equipments of every kind and description which had then been, or might thereafter be, procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been, or might thereafter be, procured for or used in connection with said railroad.

And, also, all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse, together with other property and things in said mortgage described, and that about the said 21st day of June, A. D. 1858, said mortgage was, by said company, duly and legally delivered to said William Barnes, trustee, and was by
656 said trustee thereafter caused to be duly and legally recorded in the office of the secretary of state of the State of Wisconsin, and as the plaintiff says, on information and belief, in the offices of the register of deeds in the several counties through which said railroad passes and was then located.

That on the 11th day of August, A. D. 1858, the said company made, signed, sealed, and delivered to said Barnes, trustee, a certain indenture of supplemental mortgage or deed of trust in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust hereinbefore set forth, and dated June 21, 1858, and did convey to said Barnes, as trustee as aforesaid, in addition to the things in said first mortgage, conveyed the following, that is say, all and singular the rights, privileges, liberties, and franchises of said company of every kind and description; and, also, lands grantend or intended to be granted to said company, under and by virtue of the act of Congress, and the act of the legislature of the State of Wisconsin in said supplementary mortgage mentioned, and also all the hereditaments and appurtenances or in any wise appertaining to the lands and real estate therein conveyed or intended to be conveyed; and also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action, of whatsoever nature which might be owned, or in which said company might have an interest on such day as such company might first make default in the payment of the interest or principal or any part thereof, which might thereafter become due on any of the said bonds issued or to be issued by the said company, and to which said mortgage was given. That immediately thereafter the said Barnes caused said supplementary mortgage to be recorded, as, in the same offices as the said first-named deed of trust or mortgage to said Barnes was recorded, as hereinbefore set forth; a copy of which said first
657 mortgage or deed of trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes are attached hereto, and marked respectively Exhibit No. 1 and Exhibit No. 2.

That immediately thereafter said company commenced to deliver the said last-named bonds, so secured as aforesaid, in payment of the indebtedness of said company, and for the other purposes contemplated by said company in the issue thereof, and in the necessary and proper business of said company, and that all of said bonds were sold and

delivered in payment, and transferred by said company for the purposes and in the manner contemplated as aforesaid by said company, and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons against said company for materials furnished to, and services rendered for, said company, and that large numbers of said bonds are now held by such persons in the said State, or have been by them turned into the stock of the Milwaukee and Minnesota Railroad Company, as hereinafter stated, and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York, which are now held by bona fide purchasers and owners, or have by them been turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter mentioned. That about the 1st of February, A. D. 1859, the said company having made default in the payment of or part of the interest due on said bonds secured as aforesaid, the said William Barnes, in pursuance of the provisions of the laws of said State of Wisconsin, then in force in that behalf, and the provisions contained in said mortgages of deeds of trust, proceeded to the foreclosure of said mortgages by advertisement, and having previously given the notice required by law in that behalf, on the 21st day of May, A. D. 1859, said William Barnes, trustee, sold at public auction at the court-house, in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in
658 said mortgage, and supplementary mortgage to him, said Barnes, described; and the said William Barnes, trustee, then and there, at said sale, became the purchaser thereof, according to the provisions of the laws of said State of Wisconsin, then in force in that behalf, at and for the sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, ($1,593,333 33,) no other person or body having made any bid whatever for the same; and that said mortgages thus became, and were thereby foreclosed, according to the provisions of the laws of the State of Wisconsin in that behalf then in force.

And that said Barnes, by virtue of said purchase, and the provision of the law of the State of Wisconsin then in force in that behalf, became the owner of the property, franchises, and other things so purchased by him, and thereafter held the same, in trust, and only in trust, for the holders of the then outstanding bonds secured by said mortgages.

And that afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the said bonds proceeded to organize anew, and then and there elected directors and took the corporate name "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last-named company all the property and things by him purchased as aforesaid; and thereafter said company proceeded and conducted its business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company; and thereby became, and ever since have continued, a corporation under

and by virtue of the laws of said State, capable of suing and being sued; and that said Milwaukee and Minnesota Railroad Company, immediately thereafter, entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company, so far as the same were in possession of said La Crosse and Milwaukee Railroad Company at the time of said sale.

That said bondholders, at said new organization, elected and chose the following named persons directors of said Milwaukee and Minnesota Railroad Company, viz: Russell Sage, N. J. Emmons, Hans Crocker, William E. Smith, Lemuel W. Weeks, W. B. Gilbert, William B. Gould, William R. Sill, and ——— Battershall; and that said directors, immediately thereafter, organized the said board of directors by electing and choosing Russell Sage president, N. I. Emmons vice president, and Dwight W. Keys secretary of the Milwaukee and Minnesota Railroad Company, and that neither the La Crosse and Milwaukee Railroad Company, nor any subsequent encumbrancer or encumbrancers, nor any other person or persons did, within one year after said sale, redeem or offer to redeem the property and things so sold under said mortgages or trust deeds according to law in that behalf.

That by virtue of the said foreclosure of said deeds of trust or mortgage to said Barnes as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company and conveyance by said Barnes as hereinbefore set forth, and the said premises not having been redeemed as hereinbefore stated, the said Milwaukee and Minnesota Railroad Company, from and after May 21, 1860, became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company as to all the property and things described in said deeds, and the owner of and clothed with all the rights, privileges, and franchises, and property, real and personal, and things in action and effects of every nature and description before then belonging to said La Crosse & Milwaukee Railroad Company, wherever situated, and however circumstanced, subject only to such valid and legal liens and encumbrances thereon as were prior to said first deed to said Barnes, and that the Milwaukee and Minnesota Railroad Company, being by law an incorporated company composed of the creditors of the said La Crosse and Milwaukee Railroad Company, and purchasers at said foreclosure sale, (in the manner hereinbefore stated,) as corporators, has a legal right to object to, resist, and set aside all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments which were or have been made or suffered by said La Crosse and Milwaukee Railroad Company, with intent to hinder, delay or defraud its creditors, and has the right to object to, resist, set aside every illegal, unjust, or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company which is apparently a lien or encumbrance upon any of the property, rights, privileges, franchises, or other things whatsoever of said last-named company, which were embraced or described, or intended to be embraced or described in either of said trust deeds to said Barnes, now owned by said Milwaukee and Min-

nesota Railroad Company as hereinbefore stated, and has the right to collect and enforce all actions and causes of action existing in favor of said La Crosse and Milwaukee Railroad Company, and conveyed by said trust deeds to said Barnes or either of them.

Your orator further shows that the said La Crosse and Milwaukee Railroad Company, heretofore, to wit, on or before the 26th day of September, A. D. 1857, were greatly embarrassed and in failing circumstances, that some of the creditors had before that time commenced suits against said company, and others of its creditors were threatening to do so, and the said company was unable to pay its debts and prosecute the completion of its said railroad, which was then only completed and in operation from the city of Milwaukee to or near New Lisbon in said district; and that the said company then and there designing to hinder, delay, and defraud its creditors, and to hold its creditors at defiance and apply its revenues and means to the completion of its said road, did pretend to make, and in form did make, execute, and deliver to said Selah Chamberlain a pretended deed or lease which is hereto attached and marked Exhibit No. 3, and made a part of this bill.

And your orator further shows that after the making and delivery of said last-named deed or lease to the said Chamberlain as aforesaid, to wit, on the day and year last aforesaid, the said Chamberlain entered into possession of all the property, franchises, and other things mentioned in and described in said lease or deed.

Your orator further shows that the said La Crosse and Mil-
661 waukee Railroad Company had no legal right or competent authority to make or deliver said deed or lease; that the making and delivery thereof were acts beyond the corporate powers of said company, and were therefore void and of none effect; and that the same were and are void as to all creditors of said company and as to your orator, for the further reason that the said deed or lease was made, executed, and delivered, as your orator charges the fact to be, by said company with the intent and design on the part of said company, and on the part of its board of directors, to thereby hinder, delay, and defraud its creditors, and particularly Vose, Livingston & Co., of New York, creditors of said company, and with intent to hinder and delay said Vose, Livingston & Co. from asserting their just claim and demand in regard to certain railroad iron of great value, to wit, the sum of one hundred thousand dollars and upwards, which intentions and designs of said company were well known to said Chamberlain when said deed or lease was delivered to and accepted by him, which your orator charges the fact to be, and that said Chamberlain accepted said deed or lease and entered into possession as aforesaid for the purpose of aiding and abetting said company in its said unlawful intents and designs aforesaid.

And your orator further shows that afterwards, to wit, on the 2d day of October, A. D. 1857, the said La Crosse and Milwaukee Railroad Company and the said Chamberlain, fearing and being advised by the counsel of said Chamberlain that there was some doubt as to whether the said fraudulent purposes, designs, and intentions of the

said company and the said Chamberlain could be accomplished under and by said deed or lease, and that there was some doubt whether said deed or lease would prevent said Vose, Livingston & Co. from enforcing their just demand and claim aforesaid, did on that day further combine and confederate together to hinder delay and defraud the creditors of the said company, and to hinder, delay, and defraud said Vose, Livingston & Co., and prevent them from asserting their claim and enforcing their right in regard to said railroad iron; and did then and there agree that said company should, and said company then and there did, to wit, at Milwaukee, in the said district, on said 2d day of October, 1857, confess and suffer a judgment against
662 it and in favor of said Chamberlain in the district court of the United States for the district of Wisconsin, without service of process or suit brought, for the sum of six hundred twenty-nine thousand and eighty-nine dollars and seventy-two cents damages, and fifteen dollars and fifty cents costs, which said last-named judgment was in form duly confessed, entered, and docketed in said court; but that said company, when it confessed and suffered said judgment to pass as aforesaid, was not indebted to said Chamberlain to the amount for which said judgment was rendered, and did not owe, and was not indebted to said Chamberlain in any amount whatever, but is informed and thereupon shows to your honors, that no consideration or value was ever received by, or ever accrued to, said company on account of said judgment, and that there was no consideration whatever for said judgment, and that said judgment was only confessed by said company in pursuance of said unlawful combination and confederacy between said company and said Chamberlain, and for the purpose of bolstering up said fraudulent deed or lease, and for the purpose and with the intent and design on the part of said company and its board of directors, and said Chamberlain, to thereby hinder, delay, and defraud the creditors of said company, and particularly Vose, Livingston & Co.

Your orator further shows that the said deed or lease in its operation and legal effect until the same was set aside as hereinafter stated, operated greatly to embarrass and unreasonably to hinder, delay, and defraud the creditors of said company in the enforcement of their just claims and demands against said company, and created and continued trusts for the benefit of said company to an unlimited amount, and enabled said company, through said Chamberlain, as its pretended lessee, to carry on and prosecute its business for its own benefit in defiance of its creditors, and enabled said company to enjoy and receive benefits from its said property, while its creditors were thereby unreasonably hindered, delayed, and prevented from enforcing collection of their just debts against said company out of said property and things conveyed in said lease, and the rents,
663 revenues, income, and tolls arising therefrom, and the use and operation thereof, and that for these reasons the said deed or lease to said Chamberlain, and said judgment confessed in aid of and to bolster up said lease were void in law, without regard to the intentions and designs with which, in fact, said lease was given and said judgment confessed as hereinbefore stated.

And your orator further shows that the said Chamberlain falsely and fraudulently pretends that said company was, at the time when said deed or lease was made, executed, and delivered, and said judgment confessed as aforesaid, indebted to him, said Chamberlain, in the amount for which said judgment was confessed on account of and for certain work done and labor performed and material furnished before that time by said Chamberlain for said company in completing its said road; but your orator is informed and believes, that upon a fair, just, and equitable accounting and settlement between said Chamberlain and said company in that behalf, the said company would not have been found at that time indebted to said Chamberlain.

Your orator further shows that while said Chamberlain was in possession of said road and other things under said deed or lease, and after the confessing and docketing of said judgment in his favor, to wit, on the 3d day of October, A. D. 1857, one Newcomb Cleveland received judgment against said La Crosse and Milwaukee Railroad Company in the said district court of the United States for the district of Wisconsin, for the sum of one hundred and eleven thousand seven hundred dollars and seventy-one cents damages and costs; and that afterwards said Cleveland caused a writ of fieri facias to be issued on said judgment, and delivered to the marshals of said district in due form of law, who afterwards levied the same upon certain property and things belonging to said company, also mentioned in and conveyed by said lease. That afterwards, on the 31st day of October, A. D. 1857, said Cleveland exhibited, on the equity side of said district court, his bill of complaint against said La Crosse and Milwaukee Railroad Company, and Selah Chamberlain and others, defendants; that said Cleveland, in his said bill of complaint, and made part of this bill, showed and charged that said judgment in his favor was wholly unsatisfied, that a writ of fieri facias had been issued thereon and levied upon certain property and things belong
664 to said company, also mentioned in and conveyed by said lease, and that the said lease and judgment so given and confessed by said company to said Selah Chamberlain, was a cloud upon the right of him, said Cleveland, to enforce payment of his said judgment, out of and by the sale of the property and things so levied on and by his writ of fieri facias, and prayed the aid of said district court in equity to enforce the collection of his said judgment against the property of said company thus levied upon, and the said Cleveland, in his said bill of complaint, also showed to said court that the said deed or lease, and said judgment given and confessed to said Chamberlain, hereinbefore mentioned, were made and confessed to said Chamberlain hereinbefore mentioned, were made and confessed without consideration, and with intent to thereby hinder, delay, and defraud the creditors of said company, and prayed the said court that the said deed or lease and said judgment to said Chamberlain might be by said court declared to be null and void, and for general relief, that upon said bill subpœna was duly issued and personally served upon both said La Crosse and Milwaukee Railroad Company and Selah Chamberlain; and that both said Chamberlain and said

last-named company appeared in said suit in equity in favor of said Cleveland, and put in their answers thereto in said district court, denying that said deed or lease and said judgment given and confessed to said Chamberlain hereinbefore mentioned, were given and confessed without consideration and with intent to thereby hinder, delay, and defraud the creditors of said company, and that said Cleveland took issue upon said answers of said company and said Chamberlain, by filing replications thereto; and that thereupon in that suit proofs were taken upon said issue thus made, as to the intent with which said deed or lease was given and said judgment confessed to said Chamberlain, and as to the true state of accounts between said company and said Chamberlain at the time said judgment was confessed; and that after a full hearing on the merits in said suit and upon the precise issues raised therein as to the validity of said lease and judgment to said Chamberlain, between said Chamberlain and said company and said Chamberlain, the said district court in equity, having full jurisdiction of the subject-matter
665 and parties in said suit, afterwards made a final decree in said suit, a copy of which is hereto attached, and marked Exhibit No. 4, and made a part of this bill; which said final decree is yet of full force, not vacated or reversed. Your orator further shows that after said decree was made and rendered by said court, as hereinbefore stated, and about the 2d day of March, A. D. 1859, the said Chamberlain purchased said judgment in favor said Cleveland, and procured from the solicitor of said Cleveland in said suit in equity in favor of said Cleveland a substitution in blank, so that said Chamberlain could thereafter control said judgment in favor of said Cleveland, and said suit in equity in said favor of said Cleveland, for his, said Chamberlain's, exclusive use, benefit, and advantage.

Your orator further shows that it is advised, and therefore insists, that the said decree, a copy of which is Exhibit No. 5, hereto attached, having been rendered in a suit in which said Chamberlain and said La Crosse and Milwaukee Railroad Company were both parties, and over which said suit and said parties said court had full and complete jurisdiction, is binding and conclusive upon the said Chamberlain, and has the effect to entirely set aside and annul the said lease, to all intents and purposes, and did in fact set the same aside and annul the same, and did in fact vacate, open, and set aside the said judgment so entered and docketed in favor of the said Chamberlain, to all intents and purposes, as hereinbefore stated; and that since the entering and enrolling of said decree, which still remains of full force and unreversed, the said Chamberlain has not been, and is not now, a judgment creditor of the La Crosse and Milwaukee Railroad Company, and has not, since said decree was entered, had or held any lien or encumbrance upon any of the railroad property or franchises of said La Crosse and Milwaukee Railroad Company, and your orator here and now claims the benefit and advantage of said decree, and relies upon the same as conclusive by way of estoppel against said Chamberlain and in favor of your orator as to all the matters and things therein decreed, and in the precise form and language therein decreed and determined.

But your orator further shows that notwithstanding said decree and in open violation and contempt of said perpetual injunction therein decreed and contained, the said Chamberlain did, from and
666 after the entering and date of said decree, to wit, the 11th day of February, A. D. 1859, continue as he had before been, "using, managing, running, and controlling said railroad and the rolling stock, personal property, together with its appurtenances and franchises, and everything connected therewith described in said pretended lease, and did, from the use and operation thereof thereafter, in fraud of said La Crosse and Milwaukee Railroad Company, and its creditors, and in direct violation of said perpetual injunction, of the revenue, tolls, and income of said railroad and other property, receive more than the sum of two hundred thousand dollars, and more than the amount of said judgment rendered in favor of said Cleveland, as aforesaid so owned by him, said Chamberlain, and all interest and costs thereon, which said sum of more than two hundred thousand dollars, so received by said Chamberlain as aforesaid, the said Chamberlain still holds and has never accounted therefor with the La Crosse and Milwaukee Railroad Company or your orator, or any other creditor or creditors of said La Crosse and Milwaukee Railroad Company.

And your orator further shows that said judgment, so rendered in favor of said Cleveland, remains unsatisfied upon record, and is an apparent lien, charge, and encumbrance upon the La Crosse and Milwaukee railroad, so called, from Milwaukee to Portage, now owned by your orator, prior to the title and right of your orator thereto; but that the same ought in equity to be cancelled by an application of the amount thereof from the moneys so received by said Chamberlain after the rendition of said final decree on the 11th day of February, A. D. 1859, as hereinbefore stated.

To the end therefore that the said Selah Chamberlain may, if he can, show why your orator is not entitled to the relief hereinafter prayed for, and that the said Selah Chamberlain may full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated, (but not upon oath, the oath of the said Selah Chamberlain to said answer or answers being thereby expressly waived,) as fully and particularly as if the same were hereinafter repeated, and he thereupon particularly interrogated, and that not only to the best of his knowledge and remembrance, but
667 also as to the best of his information, hearsay, and belief; and that the said Chamberlain may be ordered, adjudged, and decreed to apply to the payment and satisfaction of said judgment, rendered in favor of said Cleveland, the amount thereof, together with interest and costs thereon, from the money so received by him, as hereinafter stated, after the date of February 11, 1859, and that of and concerning said money so received by him, and said judgment in favor of said Cleveland, an account may be stated, in which said Chamberlain shall be charged with the amount of said money so received by him, together with interest thereon, and credited with the amount due in said judgment rendered in favor of said

Cleveland, including interest thereon, and all costs properly chargeable upon the same, and that a balance may be ascertained, and that said judgment, rendered in favor of said Cleveland, may, by order of this honorable court, be satisfied, and ordered to be cancelled, and that said Chamberlain be restrained from setting up or pretending any further right or claim on account of said judgment in favor of said Cleveland; and that the said Chamberlain be ordered to pay over to your orator such balance as may be found against him on said accounting; and in case said accounting shall show a balance in favor of said Chamberlain, your orator here offers to pay the same to said Chamberlain as the court shall direct; and that your orator may have such other or further relief as the nature of its case may require, and as shall be agreeable to equity, may it please your honors to grant unto your orators the writ of subpœna, to be issued out of and under the seal of said court, according to law, to be directed to said Selah Chamberlain, and commanding him, said Selah Chamberlain, on a day certain, therein to be named, and under a certain penalty, therein to be named, to be and appear before your honors, in said court in equity, and there to answer the matters and things aforesaid, and to stand to and abide such order or decree as your honors may make in the premises, and as shall be agreeable to equity and good conscience.

The Milwaukee and Minnesota Railroad Company—

By MATT. H. CARPENTER, *Solicitor.*
MATT. H. CARPENTER, *of Counsel.*

No. 230.—Filed June 9, 1863.

668 *Exhibit No.* 1.—*Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas, the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA.

No. ——. *State of Wisconsin.* $ ——.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof, in the sum of dollars,

which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany, and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee,
669 and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed, and is now in full operation, and the residue is in process of construction, together with the equipments, and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds, secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

——— ———, *President.*
——— ———, *Secretary.*

Registered and countersigned this 185..
——— ———, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises, and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction,

including all and singular the several tracts, pieces, or par-
670 cels of land which now are, or hereafter may be, or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may hereafter constitute, or be a part of, or appertain to said railroad. And also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on, or appertaining to, said railroad, whether now built or made, or to be built or made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been, or may hereafter be procured for, or used on said railroad, and all the materials, tools, implements, and utensils, and other personal property, which have been, or may hereafter be procured for, or used in connection with said raid railroad; and also all and singular the rights, liberties, and privileges and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to, and vest in, said party of the second part all the property, real and personal, of said railroad company, to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do, or hereafter may, belong to said company, under any grant from the United States or the State of Wisconsin, subject, nevertheless, to lines already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road between Milwaukee and Portage City to secure outstanding bonds of said company to the amount of about nine hundred and twenty-two thousand dollars. Also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars.

671 Also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars; also subject to a mortgage of four million dollars upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages to the aforesaid party of the second part, and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed:

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they may respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or
627 purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given.

And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and either of said cases, said trustees on the written request of the holder or holders of bonds then outstanding to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor that said company will, from time to time during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed, or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustees shall be paid, the trustee will reconvey to said railroad company all this right, title, and interest of and to the trust property.

Sixth. Said railroad company will from time to time pay all costs, charges, expenses, and compensation of the trustee in, about, or for the execution of the trust, and will in all things keep him fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be put to in consequence of accepting this trust, or of any thing which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars, with such sums as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds secured by this deed of trust at the lowest price he can purchase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased belonging to said sinking fund shall be retained by said trustee until this trust be closed.

674 Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and

other expenses of the trustee and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to such railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee, the trustee may resign his trust, thenceforward discharged from all further duty or obligation in relation thereto; provided such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee, and had executed this deed.

Eleventh. Said trustee hereby accepts, and covenants and agrees to and with said railroad company faithfully to execute, said trust.

In witness whereof said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse & Milwaukee Railroad Company—

[SEAL.] By N. P. STANTON, *President.*

675 LOCKWOOD L. DOTY,

Secretary of the La Crosse and Milwaukee Railroad Company.

WILLIAM BARNES, *Trustee.*

Signed, sealed, executed, and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee.

CLARK, B.
J. C. CARY.

Signed, sealed, and delivered in our presence as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the pre-

sident of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument, as president as aforesaid, freely for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P.
676 Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the 2d day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated. And I certify that the person who made the said acknowledgment is personally known to me to be individual described in, and who executed, the said instrument.

In testimony whereof I have hereunto set my hand and
677 seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this 7th day of July, 1858, before me, personally appeared Lockwood L. Doty, to me well and personally

known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal.

[SEAL.] E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

678 *Exhibit No. 2.*

Indenture made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee, as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part:

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be, and is hereby, granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships 25 and 31, and from thence to the west end of Lake Superior and to Bayfield, and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers for six sections in width, on each side of said roads respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State to select, subject to the approval of the Secretary of Interior, from the lands of the United States nearest to the tier of sections

above specified, as much land in alternate sections or parts of section as shall be equal to such lands as the United
679 States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land, thus selected in lieu of those sold, and which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purposes aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land, which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid and no other; and the said railroads shall be and remain public highways for the use of the govern-
680 ment of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say: that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said road, under the direction of the Post Office

Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law the Postmaster General shall have the power to determine the same.

Approved June 3, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11, 1856, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, 1856," the people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads, with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise, and enjoy the same rights, privileges, functions, franchises, authority, and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built or to be built thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connection with any and all other railroads which may cross, come up to, or connect with the said railroads, or either of them, upon such

terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies, as last above mentioned, but all such companies shall be put upon the same equal terms: *And provided also*, That if the said La Crosse and Milwaukee Railroad Company, and such
682 other railroad company as may desire a running connection with the same, shall at any time not be able to agree upon the terms of such connections, then, and in that case, either party may apply to the circuit court of the circuit in which such connection may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connection shall exist, and the said award of terms of connection shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice, in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads which by this act the La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present and prospective, of this State, in or to any and all the lands granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress, entitled "An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads," approved June 3, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said lands shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say: whenever twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State
683 shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed, so as to admit of running regular trains of cars on the same, the governor shall certify as above, and thereupon a further quantity of one hundred and twenty sections o

said land shall vest in said company, and so from time to time until said roads are completed, and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit running regular trains of cars on the same; and the governor of the State shall, in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this charter be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of road shall be completed so as to admit of running regular trains over the same, and so on from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and the designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads and the compensation of such agents, shall be at the cost and charge of said company without charge of any kind upon the treasury of the State of Wisconsin. Said railroad which shall be constructed by the application of funds derived from the lands herein granted shall be and remain public highways for the use of the government of the United States
684 free from any tool or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed or which it may hereafter construct, under the present charter, and in addition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road, to be built by said company, in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treas-

urer and secretary of said company, and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company and to examine under oath the officers, agents, and employees of the said company and other persons, and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company.

The first payment shall be made on the first day of March next after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made, and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or other municipal authority in the State, (except special taxes for the improvement of streets and side walks,) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed, held by said company, and necessary for the operation of said railroad; and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited quantities at fair prices, preference being given to actual settlers.

SEC. 8. The La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other watercraft on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build, and own such vessels, boats, barges, and other water craft as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company

shall be capable in law of taking and holding any lands granted by the government of the United States or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of all their right, title, or demand of, in, or to any lands, or interest in lands granted to said *said* company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad, which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy, and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth, such payment to be made in money, bonds, stock, or lands, or in such other manner as said companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, 687 and in case they cannot agree upon such third person, the governor shall appoint such third person; and the three persons so selected shall constitute a board of commissioners, whose duty it shall be to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11. This act and all grants herein contained shall cease and be void unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not

been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy by making payment thereof as is in this act provided, is hereby declared to be taken for public use so soon as the said company shall so appropriate, take, possess, hold, or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount
688 subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two millions of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary pro rata from each of the several subscriptions; and of all the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of the said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall, from time to time, operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of the last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state;

And whereas the said railroad company for the purpose of pro iding for and securing the payment of its floating debt and for o ner purposes, had determined, before the date of the indenture hereinafter mentioned, dated June 21, 1858, between said company of the first part, and said Barnes, as trustee, of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate,

embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with or coupons in the usual form attached;

689 And whereas the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, franchises, as by reference thereto will more fully and at large appear;

And whereas also the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances;

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, sold, bargained, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part, all and singular the

690 railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles, and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R.

Co. by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands and real estate, which now constitute, or may hereafter constitute, to be a part of, or appertain to, said railroads, and including also all and singular the lots, lands, and real estate whatsoever, which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made, or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto; for a particular description *description* of which lands already acquired reference is made to the various deeds of the same of the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter.

691 And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all

the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liber-
692 ties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated, and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above-described and granted premises, lands, tenements, and every part and parcel thereof; and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired; and also all the rights, property, real, personal, and and mixed, choses in action, privileges, and franchises above conveyed, or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, estates, or corporations lawfully claiming or to claim the same, or any part thereof, subject nevertheless to all legal liens already existing upon the property and franchise above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part and his successors, and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed, and also expressed in the said indenture, made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds or some of them, or in the payment of the interest thereon, or
693 some part thereof, and the said railroad company shall be suffered and permitted to hold and enjoy said railroads with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and

singular the railroads, and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least, in two newspapers published in the city of New York and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given; and in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggre-
694 gate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents in addition to those provided for in said original indenture executed by and between said parties on the 21st day of June, 1858, and recorded as above men-

tioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence or wilful default in the discharge or omission of any of his duties. And it is hereby expressly declared, covenanted and agreed by the said railroad company that the provisions herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage executed by and between said parties, bearing date June 21, 1858, and recorded
695 as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect, and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture in the same manner as if all the provisions thereof had been inserted and incorporated in said original trust deed or mortgage. Said trustee hereby accepts, and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name, and affixed his seal the day and year first above written.

La Crosse and Milwaukee Railroad Company—

[SEAL.] By N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
[SEAL.] WILLIAM BARNES, *Trustee.*

Signed, sealed, executed, and delivered in our presence as to the La Crosse and Milwaukee Railroad Company, by N. P. Stanton, president.

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, and executed, and delivered in our presence as to William Barnes, the said trustee.

JOHN G. WHITE.
ISAAC EDWARDS.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Nehemiah P. Stanton, described in and who executed the above instrument in
696 writing as the president of, and in behalf of, the La Crosse and Milwaukee Railroad Company, and acknowledged that he ex-

ecuted the said instrument as president as aforesaid freely for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by the order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. — Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.]

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me, personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

697 In testimony whereof I have hereunto set my hand and seal official, at my office No. — Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer

oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.]

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

698 *Exhibit No. 3.*

LEASE.

The La Crosse and Milwaukee Railroad Company to Selah Chamberlain.

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland, and State of Ohio, party of the second part, at the city of Milwaukee and State of Wisconsin, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven:

The said party of the first part, in consideration of the undertaking and agreements of the said party of the second part, hereinafter contained, hereby sells and conveys to the said party of the second part all its personal property of every name, kind, and description, in the State of Wisconsin, except all such personal property as is used in and is appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto so soon as the same can conveniently be done. And the said party of the first part, in consideration of the said undertakings and agreements of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the thirtieth day of September, in the year 1857, for an indefinite term of time, to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and ortage City, to the city of La Crosse, together with its right of

way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind and description connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances and franchises connected therewith, or belonging or incident thereto, subject only to such prior and superior liens as may or do exist thereon, and all existing contracts and agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part
699 shall, from and after the said thirtieth day of September, and until this agreement shall be terminated in the manner hereinafter provided, operate so much of the said railroad as is ready for operation, and from time to time such portions of the same as shall be made ready for operating in such manner as will produce the largest amount of net receipts. That the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair, and that the said party of the second part shall receive and appropriate, in the manner hereinafter provided, all the receipts or income to be derived from the operation of said railroad.

It is further mutually agreed that the said party of the second part may, if it shall be found for the interest of said company, buy additional rolling stock, and appropriate the receipts of said railroad to the payment of the same.

The said party of the second part hereby undertakes and agrees that he will defray all the current costs and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the cost and expenses of operating the said railroad, and that he will, by the 15th day of every month, make out and deliver to said party of the first part a correct statement exhibiting the total receipts and income of said railroad from all sources during the next preceding month; also the cost and expenses during such month of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and the cost and expense of operating said railroad, and also exhibiting the net receipts from said railroad, after deducting such cost and expense of rolling stock and repairs, and that he will at any time, on demand of said company or its president or secretary, furnish to the person demanding the same a statement in detail of the items of which such statement is composed, and any officer or agent of said company, authorized by said company to do so, shall at any time have the right to examine the accounts of said party of the second part relating to the repairs of said railroad and rolling stock, and to the operating of said railroad.

And the said party of the second part further undertakes
700 and agrees that the said net receipts, after deducting the cost and expenses of repairs and operating as exhibited by the said monthly statements as aforesaid, shall be appropriated by him in the manner following, to wit:

1. To the payment of all coupons hereafter to become due upon

nine hundred and fifty thousand dollars of the bonds of said company, secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage City, bearing date June 13th, A. D. 1854, together with the sinking fund provided for by a supplemental mortgage or deed of trust, bearing date Feb. 18, 1856, except such of said coupons as are payable November 1st, 1857.

2. To the payment of all coupons hereafter to become due on one hundred and fourteen thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date on the 1st day of September, A. D. 1853.

3. To the payment of all coupons hereafter to become due on two hundred thousand dollars of the bonds of the city of Milwaukee, issued to the La Crosse and Milwaukee Railroad Company, secured by a second mortgage or deed of trust on the part of said railroad, which mortgage or deed of trust bears date the 30th day of July, A. D. 1854.

4. To the payment of all coupons hereafter to become due on one million of dollars of the bonds of the said railroad company, secured by mortgage or deed of trust on the railroad of the said company from Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of , A. D. 1857.

5. Whatever balance of said net receipts as aforesaid shall remain after the payment of the said coupons and sinking fund, shall be applied by the said party of the second part in payment of the amount due or hereafter to become due to him, by virtue either of a certain contract between said parties, dated January twentieth, 1857; a supplemental contract between said parties, dated April 30th, 1857;
or a certain contract between said parties, dated November 20th,
701 1856; or of a contract modifying said contract, entered into between the said parties simultaneously with this contract, except such as may become due for work which shall be hereafter done between New Lisbon and La Crosse, which is to be paid for from the means of the said company other than the said income.

And the said party of the second part further undertakes and agrees, that whenever he shall have received from the earnings of the said railroad such sum as by the terms and conditions of the aforesaid contracts for the construction of the said railroad, bearing date respectively November 20, 1856, January 20, 1857, April 30, 1857, and the one entered into simultaneously herewith, he is or shall be entitled to receive, or whenever at any time the said party of the first part shall pay to him any balance which at such time he shall be entitled to receive, according to the terms and conditions of the said contract, that he will surrender up to the said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way, depot grounds, and all buildings, tenements, and fixtures, of whatsoever kind or description, connected therewith or appertaining thereto, in good repair, together with all estate, rights, privileges, franchises,

and appurtenances connected therewith or belonging or incidental thereto, including all the railroad buildings, tenements, fixtures, and appurtenances constructed, and rolling stock and other personal property put upon said road by said party of the second part, by virtue of this contract, and that he will reconvey and deliver to said party of the first part all personal property hereby conveyed, which shall not have been worn out, destroyed, or consumed in the construction or operation of the said railroad, and that he will convey and deliver to said party of the first part all personal property which shall have been acquired for said railroad, in pursuance of this contract, or with the means derived from the receipts from said railroad, and that he will at such time deliver on the line of said railroad, to said party of the first part, fifteen thousand cords of wood; and that whenever the said party of the second part shall have received as aforesaid such sum as he shall be entitled to as aforesaid,
702 or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void.

In witness whereof the said party of the first part hath caused these presents to be signed by its president and secretary, and its corporate seal to be hereunto affixed, and the same are signed by the said party of the second part.

La Crosse and Milwaukee Railroad Co.—
(Signed) By BYRON KILBOURN, *President.*
[L. S.] JACKSON HADLEY, *Secretary.*
[L. S.] S. CHAMBERLAIN.

Signed, sealed, and delivered in the presence of—
H. L. PALMER.
THOMAS W. BEAVER.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Be it remembered, that on this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, before the subscriber, a notary public, residing in the city of Milwaukee, personally appeared Byron Kilbourn, who being by me duly sworn, said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common and corporate seal of the said company, and was affixed thereto by their authority; and that he, as president, and Jackson Hadley, as secretary, subscribed their names thereto by like authority; and on the same day, before me, personally appeared Selah Chamberlain, to me known to be the person described in, and who executed, the foregoing instrument, and acknowledged that he executed the same freely for the uses and purposes therein mentioned.

(Signed) H. L. PALMER,
Notary Public, Milwaukee County.

703 *Contract.*

La Crosse and Milwaukee Railroad Company with Selah Chamberlain. Copy from directors' minutes:

Resolved, That a contract be entered into with Selah Chamberlain, which shall be signed by the president and secretary and sealed with the corporate seal of this company, in the words and figures following, to wit:

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland, and State of Ohio, party of the second part:

Witnesseth, that the said parties have mutually undertaken and agreed, and by these presents do undertake and agree, to and with each other, that the contract heretofore entered into between the said parties, for the construction of the western division of the La Crosse and Milwaukee railroad, from Portage City to La Crosse, excepting the bridge across the Wisconsin river at Kilbourn City, and which contract bears date the 20th of January, A. D. 1857, and the supplemental contract entered into between the same parties, and bearing date the 30th day of April, A. D. 1857, shall be, and the same are, hereby modified as follows, to wit:

The said party of the second part shall proceed to complete the construction of said railroad as far as the depot at New Lisbon, in the county of Juneau, with reasonable despatch, and by the first day of December next. The time for completing the said railroad from New Lisbon to La Crosse is extended indefinitely, and the said party of the second part shall construct the said railroad, between the two last-named points, as fast as and no faster than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same in cash, on monthly estimates, according to the terms of stipulations of the aforesaid contract.

704 The contract entered into by and between said parties on the twentieth day of November, A. D. 1856, for the ballasting that portion of the La Crosse and Milwaukee railroad extending from Beaver Dam to Portage City, is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite for doing said work, but that the motive power so used shall be a part of that specified in a contract between said parties entered into simultaneously with this contract for the leasing of said railroad, and that said party of the second part shall, for all ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured in the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extension of the time of con-

structing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second part will sustain by reason of such extension, and by loss, as teams, material, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second part is to be paid the amount now due to him, and the amount to become due to him for finishing said railroad to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due, and in further consideration of the services, risks, and personal expenses of the said party of the second part in the operation and management of said railroad as hereinafter referred to and more particularly set forth in said contract of lease, the said party of the first part hereby agrees to pay to the said party of the second part the liquidated sum of two hundred thousand dollars, which sum is mutually agreed upon by said parties as an equivalent for the aforesaid considerations.

It is further stipulated and agreed that by or before the 20th day of October, A. D. 1857, a full and correct statement shall be made out of the amount due to the said party of the second part on the 30th
705 day September, 1857, under and by virtue of the said contract of January 20th, 1857, April 30th, 1857, and November 20th, 1856, which sum, together with the aforesaid sum of two hundred thousand dollars, ($200,000,) shall be the balance due to the said party of the second part on the 1st day of October, 1857, and shall be charged by said party of the second part to the said party of the first part; and on the first day of every month thereafter the said party of the second part shall charge the said party of the first part with the amount which shall be due under or by virtue of either of said contracts or this contract in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part with such sum as the said party of the first part shall be entitled to receive from the net earnings of the said railroad, by virtue of the said contract of lease entered into between said parties simultaneously with these presents.

It is further agreed between the said parties that on the first day of July, 1858, and on the first day of each July and each January thereafter, a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be computed up to the day of making out such accounts, at the rate of twelve per cent. per annum.

It is further agreed between the said parties whatever sums shall hereafter become due to said party of the second part for any work done on the construction of said railroad between New Lisbon and La Crosse, shall be paid to him by said party of the first part from the means of said company derived from other sources than the income of said railroad.

In witness whereof the said party of the first part has caused these presents to be signed by its president and secretary, and the corpo-

rate seal of said company to be affixed thereto, and the said party of the second part has affixed his signature and seal the day and year first above written.

La Crosse and Milwaukee Railroad Company—

(Signed) By BYRON KILBOURN, *President.*

[L. S.] JACKSON HADLEY, *Secretary.*

[L. S.] S. CHAMBERLAIN.

706 LA CROSSE AND MILWAUKEE R. R. CO.,
SECRETARY'S OFFICE, *Milwaukee, April* 23, 1858.

I hereby certify that the foregoing resolution is a true copy of a resolution adopted by the board of directors of this company at a special meeting held at Milwaukee, on the 26th day of September, 1857, and that the preceding contract is a true and correct copy of, and the whole of, the contract therein referred to, as appears from the recorded minutes.

RICHARD DOTY,
Secretary.

Exhibit No. 4.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the third day) of January, A. D. 1859.

Present, the Honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-first day of said term, to wit, on the eleventh day of February, A. D. 1859, the following proceedings were had, to wit:

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Selah Chamberlain. } In equity.

This day came the parties by their counsel, and on due consideration of the pleadings, proofs, and arguments of counsel, it is thereupon ordered, adjudged, and decreed by the court, that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal prop-
707 erty, (except such as is used on the Milwaukee and Watertown division of said railroad,) and leased to said Chamberlain their said railroad and appurtenances, rights, franchises, and privileges, be, and hereby is, vacated, annulled, and made void, so that the same shall not hereafter be of any force or effect whatever.

And the said Selah Chamberlain be, and hereby is, perpetually

enjoined and restrained from using, managing, running, controlling, or meddling with said railroad, or the rolling stock, personal property, or any of its appurtenances or franchises, or anything connected therewith under or by virtue of said article of agreement.

And it is further ordered, adjudged, and decreed by the court that the judgment of the said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company, entered in this court on the second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon be, and hereby are, vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever.

And it is further ordered, adjudged, and decreed by the court that the said defendant, Selah Chamberlain, pay the costs to be taxed, so far as they accrued in this proceeding against him, and that he pay the same within twenty days, or in default thereof an execution be issued against him for the same.

As a lease and assignment of the said company to D. C. Freeman has expired by its own limitation, it is further ordered, adjudged, and decreed by the court that the defendant, D. C. Freeman, pay the costs, to be taxed, so far as they accrued in this proceeding against him, within twenty days, or in default thereof an execution be issued against him for the same.

And it is further ordered, adjudged, and decreed by the court that the La Crosse and Milwaukee Railroad Company pay the costs, to be taxed, so far as they accrued in this proceeding against it, within twenty days, or in default thereof an execution be issued against it for the same.

And it is further ordered that reference be, and hereby is, made to a master of this court to ascertain and report the annual in-
708 come of the several lots described in the bills, as having been conveyed to Moses Kneeland and James Ludington from the time of their said purchase, together with a statement of the interest thereon, and also to ascertain and report the amount of the actual cost of permanent improvements made on said lots by said Kneeland and Ludington, together with interest thereon, and also the amount of liens and taxes on said lots that have been paid by said Kneeland and Ludington, or by C. D. Nash, for them, together with interest on the same. And that this bill be retained for further decree and proceedings after the coming in of said report.

It is ordered by the court that in case of appeal by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, or either of them, a bond to authorize a supersedeas shall be given and filed, with sufficient sureties, to be approved by the court or judge, in the penal sum of one hundred and fifty thousand dollars.

A. G. MILLER.

Whereupon a subpœna issued, returnable the 1st Monday of August, then next ensuing, to wit:

Subpœna.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

The President of the United States of America to Selah Chamberlain, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of August next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by the Milwaukee and Minnesota Railroad Company. And to do further and receive what our said court shall have considered in that behalf, and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said
709 Selah Chamberlain if to be found in his district, and due return thereof make.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-seventh.

[SEAL.]

J. M. MILLER, *Clerk.*
MATT. H. CARPENTER,
Solicitor.

[50-cent int. rev. stamp.]

It is ordered by our said court that the said Selah Chamberlain, the defendant aforesaid, do enter his appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid, otherwise the bill filed may be taken as confessed.

Filed July 3, 1863.

Return.

And afterwards, and on or before the return day of said subpœna, came the said marshal, and returned the same, with his return indorsed thereon in writing, as follows:

Served on the within-named Selah Chamberlain, by delivering him, personally, a copy of this subpœna, this 29th day of June, 1863.

D. C. JACKSON, *Marshal.*
By W. S. JACKSON, *Deputy.*

Rule to plead.

And afterwar to wit, on the third day of August, A. D. 1863, came the compl..nant, by its solicitor, and entered in the order and rule book a rule on the defendant to plead, as follows:

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.

AUGUST 3, 1863.

On motion of M. H. Carpenter, solicitor for the complainant, ordered that the defendant appear and plead, answer, or demur to the bill of complaint in this cause, on or before the first Monday of September, A. D. 1863, or said bill will be taken as confessed.

710 *Demurrer.*

And afterwards, to wit, on the 18th day of September, A. D. 1863, came the said defendant, by Wm. P. Lynde, and J. H. Van Dyke, esqr's, and filed his demurrer to said bill of complaint, as follows:

The demurrer of Selah Chamberlain, one of the defendants to the bill of complaint of the Milwaukee and Minnesota Railroad Company, complainant:

This defendant, by protestation, not confessing or acknowedging all or any of the matters in the said complainant's bill to be true in such manner or form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the said complainant hath not in and by said bill made or stated such a case as doth or ought to entitle the complainant to any such relief as is thereby sought and prayed for from and against this defendant; wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, or any of the matters therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

WM. P. LYNDE,
J. H. VAN DYKE,
Solicitors.
N. J. EMMONS,
Of Counsel.

DISTRICT OF WISCONSIN, *ss:*

Selah Chamberlain, of the city of Cleveland, and State of Ohio, being duly sworn, says that he is the defendant named in the foregoing demurrer, and he further says that said demurrer is not interposed for delay.

S. CHAMBERLAIN.

Sworn before me September 18th, 1863.

J. M. MILLER, *Clerk.*

[Stamp.]

I certify that in my opinion the foregoing demurrer of Selah Chamberlain, defendant, is well founded in point of law.

N. J. EMMONS,
Of Counsel.

711 *Demurrer set down for argument.*

And afterwards, on the 14th day of April, A. D. 1864, came the complainant, by Matt. H. Carpenter, its solicitor, and on his motion it is ordered that the demurrer of the defendant be set down for argument on the third Monday in April, A. D. 1864, and afterwards, on the 28th day of April, A. D. 1864, came the parties by their counsel in open court, and this cause came on to be heard on the demurrer of the defendant to the complainant's bill, and was submitted by counsel without argument; and in consideration thereof it is ordered by the court that said demurrer be, and the same hereby is, sustained. And it is further ordered, adjudged, and decreed by the said court that the complainant's bill be, and the same is, dismissed at the costs of the complainant.

And came the complainants by its counsel on the same day in open court and prayed an appeal to the Supreme Court of the United States.

Whereupon it is ordered by the court that the said appeal be allowed upon the said complainant giving bond, with sufficient sureties in the penalty of two hundred and fifty dollars, to be approved by the court or a judge thereof.

And afterwards, to wit, on the 4th day of May, A. D. 1864, came the said complainant the Milwaukee and Minnesota Railroad Company and filed its bond with sureties to perfect said appeal, which bond was then and there duly approved, as follows:

Bond.

Circuit court of the United States for the 9th circuit and district of Wisconsin.

THE MILWAUKEE AND MINNESOTA RAILROAD Company, compl't,
vs.
SELAH CHAMBERLAIN, def't.

Know all men by these presents, that the Milwaukee and Minnesota Railroad Company, as prineipal, and Austin Gunnison and Josiah A. Noonan, as sureties, are held and firmly bound unto Selah Chamberlain in the just and full sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves,
712 our successors, and legal representatives, firmly by these presents. Dated, signed, sealed, and delivered this 30th day of April, A. D. 1864: provided, however, that the condition of this

bond is such that whereas the said Milwaukee and Minnesota Railroad Campany has appealed to the Supreme Court of the United States for an order and decree made by the Circuit Court of the United States *for an order and decree made by the Circuit Court of the United States* for the 9th circuit and district of Wisconsin, in equity, in a certain cause pending in said circuit court in favor of said company, complainant, and the said Chamberlain, defendant, sustaining the demurrer of the said *demurrer of the said* defendant to the bill of complaint of said complainant, and dismissing said bill of complaint on the 28th day of April, A. D. 1864.

Now the condition of this obligation is such that if the said Milwaukee and Minnesota Railroad Company shall prosecute its said appeal to effect and answer all costs if it shall fail to make good its appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

The Milwaukee and Minnesota Railroad Company—

[SEAL.] By DWIGHT W. KEYES,
Secretary of said Company.

[SEAL.] AUSTIN GUNNISON.

[SEAL.] J. A. NOONAN.

DISTRICT OF WISCONSIN, *ss:*

Austin Gunnison being first duly sworn, on oath says that he signed and sealed the foregoing bond; that he is worth more than one thousand dollars over and above all liabilities and exemptions of property from forced sale on execution; and that he is a resident and freeholder in the State of Wisconsin.

AUSTIN GUNNISON.

Subscribed and sworn to before me, this 4th day of May, A. D. 1864.

GEO. C. KLEPSER,
Notary Public, Milwaukee Co., Wis.

[Revenue stamp.]

713 DISTRICT OF WISCONSIN, *ss:*

Josiah A. Noonan, being first duly sworn, on oath says that he signed and sealed the foregoing bond; that he is a resident and freeholder in the State of Wisconsin, and that he is worth one thousand dollars over and above all indebtedness and exemptions of property from forced sale on execution.

J. A. NOONAN.

Subscribed and sworn to before me, this 4th day of May, A. D. 1864.

GEO. C. KLEPSER,
Notary Public, Milwaukee Co., Wis.

[Revenue stamp.]

I hereby approve this bond and the sureties thereto. Dated May 4, 1864.

A. G. MILLER,
District Judge.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the 9th circuit and district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and that they are true copies of their respective originals now on file and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the suit of the Milwaukee and Minnesota Railroad Company, complainant, against Selah Chamberlain, defendant, in said court.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district of Wisconsin, this 4th day of May, A. D. 1864, and of the independence of the United States the eighty-eighth.

A. SCOTT SLOAN, *Clerk.*

Filed May 14, 1864.

Fees, $23 50.

The Milwaukee and St. Paul Railway Company and Selah Chamberlain offered and read in evidence the following depositions, as follows:

714 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Francis Bloodgood, examiner in chancery, &c., resident in the city of Milwaukee, do hereby certify that the annexed deposition of George H. Daniels is a part of the testimony of the defendant in the cause entitled in the caption thereof, taken before me pursuant to rule 67, in equity, and the rules and practice of this court; and that in the caption, body, and jurat of said deposition is included the record of all the proceedings before me at the time of the taking of the same.

In testimony whereof I have hereunto set my hand and seal this 12th July, 1865.

[SEAL.] FRANCIS BLOODGOOD,
Examiner, &c.

In the circuit court of the U. S. of America in and for the district of Wisconsin.

MILWAUKEE & MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

Deposition of George H. Daniels, a witness produced, sworn, and examined on behalf of the defendant, before Francis Bloodgood, one of the examiners of the said court, at his office in the city of Milwaukee, pursuant to rule 67 in equity, and the rules and practice of this court.

Before the examiner June 14, 1865. Present, M. H. Carpenter, esq., of counsel for the complainant, N. J. Emmons, esq., of counsel for the defendant.

George H. Daniels, called by the defendant andsworn, says:

1 ques. What is your age, residence and occupation?

Ans. Thirty-two. Kilbourn city. Am employed as road master on the Milwaukee & St. Paul Railway from Portage to La Crosse, and have been so employed for seven years last past.

2 ques. When you first went on to that road, what was the
715 general condition of embankments and excavations in regard to their being of full width and heighth?

Ans. To the best of my recollection the embankments were of full width at sub-grade, before the track was ballasted.

3 ques. Did the work of the construction of the road appear to have been done in a workmanlike manner?

Ans. It did.

4 ques. Had that portion of the road between Portage and New Lisbon been ballasted?

Ans. A portion had, and a portion had not, when I went on the road.

5 ques. Does the ballast on that portion of the road waste away? and if so, from what causes?

Ans. It does waste by the winds, and there is a portion of it wasted by being shovelled off the first year that I took charge of the track. That is the loam of the bank was shovelled and thrown down the embankment.

6 ques. Would these causes make any considerable waste in the ballast in a period of four years?

Ans. It would.

7 ques. Why was this ballast thrown down the bank?

Ans. I was directed to round off the tops of the embankment to shed the water, that is, that the water might run off from the track.

8 ques. Of what kind of rock are the rock excavations on that portion of the road?

Ans. Sand rock.

9 ques. Does that rock, or any portion of it, change its character on exposure to the weather? and how does it change?

Ans. It does. It pulverizes and becomes soft.

10 ques. Were the rock excavations, as a general thing, out
716 at a full width when you went on the road, or were they as nearly so as is usual on railroads?

Ans. I think they were as wide as I have ever seen them on any railroad.

11 ques. Do the embankments and ballast waste any considerable quantity by the action of the wind?

Ans. They do at some points to a great extent.

Cross-examination:

1 x-ques. Are you an engineer by profession or practice?

Ans. I am not.

2 x-ques. Are you a geologist?

Ans. I am not.

3 x-ques. Did you ever measure any portion of this work on the western division for the purpose of ascertaining the quantity of work

done, or whether it was completed according to the engineering plan upon which it was laid out?

Ans. I never did.

4 x-ques. Was any of this shovelling away that you speak of done upon the centre of the road bed or between the rails?

Ans. It was done outside of the rails, at the edge of the bank.

5 x-ques. How many cubic yards of earth in all was removed in that way?

Ans. I could not tell you. I can't say.

6 x-ques. Was there over fifty?

Ans. Yes.

Re-direct:

1 re-d. ques. In shovelling off this earth, about what proportion of the whole amt. of ballast was shovelled away?

717 Ans. I should judge about one eighth.

Re-cross:

1 re-x-ques. If the work had been constructed and ballasted in a workmanlike manner would this shovelling away the ballast have been necessary?

Ans. It would not, and it was not necessary in my judgment at the time.

G. H. DANIELS.

Taken down in writing and, when concluded, read over to the witness, and by him subscribed in the presence of the examiner and of such of the parties or counsel as were in attendance this 14th June, 1865.

FRANCIS BLOODGOOD.
Examiner, &c.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Francis Bloodgood, examiner in chancery, &c., residing at the city Milwaukee, do hereby certify that the annexed deposition of Daniel L. Wells, is a part of the testimony of the defendant in the cause entitled in the caption thereof, taken before me pursuant to rule 67 in equity, and the rules and practice of this court: and that in the caption, body, and jurat of said deposition is the record of all the proceedings before me at the time of the taking of the same.

In testimony whereof I have hereunto set my hand and seal this 12th July, 1865.

[SEAL.] FRANCIS BLOODGOOD,
Examiner, &c.

In the circuit court of the United States of America in and for the district of Wisconsin.

718 MILWAUKEE & MINNESOTA RAILROAD CO.
vs.
SELAH CHAMBERLAIN.

UNITED STATES OF AMERICA, *Wisconsin District, ss:*

Deposition of Daniel L. Wells, a witness produced, sworn, and examined on behal fof the defendants, before Francis Bloodgood, an examiner of this court, at his office in the city of Milwaukee, pursuant to rule 67 in equity, and the rules and practice of this court.

Before the examiner, June 15, 1865, 2 o'clock p. m.; present, M. H. Carpenter, esq., of counsel for the complainant; N. J. Emmons, esq., of counsel for the defendant.

Daniel L. Wells, being sworn on behalf of the defendant, says:

1 ques. Have you been formerly examined with reference to what is known as the filling at Fox lake?

Ans. I have not.

2 ques. Do you know the amt. of earth or rock moved and used in that filling?

Ans. I do not.

3 ques. Describe as nearly as you can the character of the work, the time when it was done, and give all the information you can tending to show the amt. of earth removed.

Answer. I had charge of the work in question. There was a pile bridge built across the lake over which trains were run for a time, after which it commenced sinking in different places, so that it was necessary to put on a train to fill it up. I remember we opened a pit to procure material when the ground was frozen, the material was very hard, as it is in all the cuts within a reasonable distance of that work. I think the material taken from one pit we opened cost at least two dollars a yard. I remember the train was sent east
719 of Beaver Dam several times to pick up stone to make the filling. I know the quantity of material put into that embankment was very large. The bottom was so soft in some places, that we came near losing the hammer to the pile driver in several instances, when engaged in driving the piles. The piles were from twenty to thirty feet in length, and would frequently go out of sight at one stroke of the hammer.

(Mr. Carpenter here appeared, and after the deposition of the witness to this point was read, moved for an adjournment to Saturday June 16, 9 a. m., which was granted, and an adjournment had to that time.)

DANL. L. WELLS

Taken down in writing and, when concluded, read over to the witness, and by him subscribed in the presence of the examiner and of such of the parties and counsel as were in attendance this 16th June, 1865.

FRANCIS BLOODGOOD,
Examiner, &c.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Francis Bloodgood, examiner in chancery, &c., residing in the city of Milwaukee, do hereby certify that the annexed deposition of A. S. Van Meenen, is a part of the testimony of the defendant in the cause entitled in the caption thereof, taken before me pursuant to rule 67 in equity, and the rules and practice of this court, and that in the caption, body, and jurat of said deposition is included the record of all the proceedings before me at the time of the taking of the same.

In testimony whereof I have hereunto set my hand and seal this 12th July, 1865.

[SEAL.] FRANCIS BLOODGOOD,
Examiner, &c.

720 In the circuit court of the United States of America in and for the district of Wisconsin.

THE MILWAUKEE & MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.

U. S. OF AMERICA, *Dist. of Wisconsin, ss:*

The deposition of A. S. Van Meenen, a witness produced, sworn, and examined on the part of the deft. in the above cause, before Francis Bloodgood, an examiner in chancery, at his office in the city of Milwaukee, pursuant to rule 67 in equity.

Before the examiner June 12, 1865, present, Mr. Carpenter for complainant, Mr. Emmons for defendant.

A. S. Van Meenen, produced and sworn on the part of S. Chamberlain:

Question. What is your occupation?

Ans. Civil engineer and have been for 20 years. In my opinion it is not possible to measure work done on a railroad four years after it was done, and arrive at an accurate result as to the quantity and character of the work; the same remark is true of six months or one year after. In earth works, the elements, wind and rain, would alter the shape and quantities of materials moved and deposited, so as to materially reduce the quantities first moved. In measurements the estimate notes of the work as measured after completion of the work by sections of one hundred feet are necessary to get at an accurate result. I am now employed as an engineer on the Chicago and Northwestern railroad. I am acquainted with the embankments on the La Crosse road west of Portage City. The wind would diminish them in four years time 25 per cent.

Cross-examination:

721 1st x-question. According to your theory that embankments would diminish 25 per cent. in four years, there would be nothing left in 20 years, do you mean to say this?

Answer. I do, sir.

2d x-question. Would this be true of rock also?

Answer. Some character of rock it would be true.

3d x-question. What is the character of the rock excavation on this road from Portage to La Crosse?

Answer. It is sand rock.

4th x-question. Is it true of sand rock exposed to the atmosphere that it grows harder or softer?

Answer. This character of rock goes out of sight, it blows away and is washed away.

5th x-question. In a rock excavation, do you mean to say that it could not be accurately measured in six months after the work was done?

Answer. Not that kind of rock, and not in the tunnel especially.

6th x-question. In the tunnel would not time, upon your theory, increase the amount excavated, so that the subsequent measurement would show more than was done?

Answer. Yes.

7th x-question. To what extent, or in what per cent., would this be so, per year?

Answer. This would depend entirely upon the quality of arching in the protection of the upper part.

722 8th x-question. Have you examined this rock work from Portage to La Crosse? If so, when, at whose request, and for what purpose?

Answer. I have run my mind over the recollection of a year ago, last January, when I went over the road several times in the cars, this is all the examination I made at the last examination. I have examined it at other times previously in the same manner.

9th x-question. Have you examined this in any other way?

Answer. No. I never examined it at any one's request, only as an engineer interested in railroads.

10th x-question. Is not your knowledge exceedingly general, not very specific?

Answer. My knowledge as to particular points is very specific.

11th x-question. What points?

Answer. The tunnel, the rock cuts west of Wisconsin river, and all the embankments (in the La Crosse valley, and all the embankments) between Portage and Kilbourn City; that takes the whole road.

12th x-question. Do you mean to swear that your engineering capacity is so great that in riding over a road in the ordinary passenger cars you can determine the character of the work, the kind of rock excavated, and the effect that atmosphere will have upon it?

Answer. Yes, sir.

13th x-question. Have you ever alighted from the cars to examine any portion of this road?

Answer. Yes sir, so as to be fully posted as to the character of the work from one end of the road to the other; every time I

723 get out of the cars I examine the character of the work.

14th x-question. How many times have you been over this La Crosse road from Portage to La Crosse?

Answer. Some twenty to thirty times.

15th x-question. Did you ever examine the work in this tunnel?

Answer. Yes.

16th x-question. How?

Answer. Walked through in on foot.

17th x-question. When and for what purpose?

Answer. The train was detained and I went for the purpose of seeing how the work was done and protected, and the character of the work; it was in the fall of 1863.

18th x-question. Did you ever take any notes of any of this work?

Answer. No.

19th x-question. In measuring an earth cut, years after the work done, would not the measurement show more work than was done?

Answer. That depends upon the grade through the cut.

A. S. VAN MEENEN.

Taken down in writing and, when concluded, and having been read over to the witness, was by him subscribed, this 12th day of June, 1865, before the examiner and such of the parties and their counsel as were in attendance.

FRANCIS BLOODGOOD,
Examiner in Chancery.

724 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Francis Bloodgood, examiner in chancery, &c., residing at the city of Milwaukee, do hereby certify that the annexed deposition of Foster C. Dodge is a part of the testimony of the defendant in the cause entitled in the caption thereof, taken before me pursuant to rule 67 in equity, and the rules and practice of this court, and that in the caption, body, and jurat of said deposition is included the record of all the proceedings before me at the taking of the same.

In testimony whereof I have hereunto set my hand and seal, this 12 July, 1865.

[L. S.] FRANCIS BLOODGOOD,
Examiner, &c.

In the circuit court of the United States of America for the district of Wisconsin.

MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.

U. S. AMERICA, *Dist. Wisconsin, ss:*

Deposition of Foster C. Dodge, a witness produced, sworn, and examined on behalf of the defendant, before Francis Bloodgood, an

examiner of said court, at his office in the city of Milwaukee, pursuant to rule 67 in equity, and the rules and practice of said court.

Before the examiner, June 13, 1865. Present: M. H. Carpenter, esq., for complainant; N. J. Emmons, esq., for defendant.

Foster C. Dodge, sworn on behalf of the defendant, testifies:

1st ques. What is your age, residence, and occupation?

725 Ans. I am fifty-two; for the the last two years, Escanaba, Michigan; my occupation, building railroads.

2d ques. Have you been engaged in building railroad at Escanaba for the last two years? If so, in what capacity have you been employed?

Ans. Yes; and have been thus employed as general superintendent for Wells & Perry eighteen months in the construction of the Peninsula railroad, and since then for the Chicago and Northwestern Railroad Co. in the same capacity.

3d ques. Were you emyloyed on the La Crosse and Milwaukee R. R. during the construction of that road between Portage and La Crosse, in 1857 and 1858? And if so, in what capacity?

Ans. I was. I was employed by Chamberlain & Co. in 1857 and 1858; had charge of laying the track from Portage west.

4th ques. Do you know the character of the embankments from Portage westward to New Lisbon, or did you know the same in 1857, when you commenced laying the track?

Ans. I knew the character of the embankments as I approached them in laying the track.

5th ques. Were they up to grade and full width?

Ans. They were, as near so as new work generally is.

6th ques. Have you any further answer to make to this?

Ans. There was one or two exceptions to its being up to grade and full width, but they were immediately made to full width, directly after the track was laid, by gravel trains. One of these points was near Kilbourn City, east of it, where the action of the Wis-

726 consin river caused the bank to slide off into the river. There was a large amt. of material put in there. I should say a great many thousand yards work lost. Another point was about three-quarters of a mile east of that, where the embankment settled on account of going across a swamp; that embankment had to be widened and filled and raised, I should think, some five or six feet. I don't think of any other places where the embankments were important at all.

7th ques. Were you employed as road master between Portage and La Crosse after the track was all laid?

Ans. After it was all laid I was employed as road master from La Crosse to Tomah.

8th ques. What was the character of ballast, of what material was it composed between Portage and New Lisbon?

Ans. Sand, principally.

9th ques. Would or would not that kind of ballast waste by action o the wind and being worked over by track men?

Ans. Yes, sir; it would from both causes.

10th ques. How much would it waste?

Ans. Sand ballast put on light will, I think, waste the first year from wind and settling and moving it for surfacing track, twenty-five per cent. I came to that conclusion from my own experience. I have had a good deal of experience. I don't think it would waste so much after the first year, after the embankments get properly settled.

11th ques. What would be the waste in subsequent years?

Ans. There would be more or less, but not as much; perhaps twelve per cent, although I have seen embankments that would waste twenty-five per cent. every year, but it is not always so.

727 12th ques. Are you acquainted with the tunnel on the La Crosse R. R, and are you familiar with the character of the work on it while it was progressing?

Ans. I am acquainted and was familiar with the character of the work on it while it was progressing.

13th ques. Do you know whether the rock which came out in the excavations there underwent any change after it came out by exposure? if so, state what?

Ans. The rock that came out of the tunnel after being exposed to the air became soft and dissolved and became sand. In all cases where I saw it, and I saw it daily for nearly two years afterwards, it became soft like sand. The rock that came out of the tunnel was run each way, some carted west and sum run in a large embankment east of the tunnel. The rock that came from the tunnel approaches was of the same character.

Adjourned till 10 a. m., June 13, 1865.

1st cross-question. Are you an engineer by profession?

Ans. I am not.

2d cross-question. Have you ever measured this work and compared it with field-notes to ascertain whether the bank was built up to grade fixed by engineers?

Ans. I have not.

3d x-question. All you know then is that the road bed as left was levelled so as to receive the track, is it not?

728 Ans. Yes, sir; and to width of 3 to 4 feet outside the ends of ties, which I consider the usual width, leaving the top of embankment 14 feet.

4th x-question. Have you ever taken any measurements to ascertain the width of the embankment?

Ans. I don't recollect that I have.

5th x-question. Then you swear only from general observation and recollection of the embankment, do you not?

Ans. I don't swear from any actual measurement. I have no other means of swearing except my recollection of the general observations of the road.

F. C. DODGE.

Taken down in writing and, when concluded, read over to the witness and by him subscribed, in the presence of the examiner and such of the parties or counsel as were in attendance this 14th June, 1865.

FRANCIS BLOODGOOD,
Examiner, &c.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Francis Bloodgood, examiner in chancery, &c., residing at the city of Milwaukee, do hereby certify that the annexed deposition of William R. Sill is a part of the testimony of the defendant in the cause entitled in the caption thereof, taken before me pursuant to rule 67 in equity and the rules and practice of this court, and that in the caption, body, and jurat of said deposition is included the record of all the proceedings before me at the time of taking the same.

In testimony whereof I have hereunto set my hand and seal, this 12th July, 1865.

[SEAL.]

FRANCIS BLOODGOOD,
Examiner, &c.

729 In the circuit court of the United States of America in and for the district of Wisconsin.

THE MILWAUKEE & MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.

U. S. AMERICA, *Dist. Wisconsin, ss:*

The deposition of William R. Sill, a witness produced, sworn, and examined on behalf of the defendants, before Francis Bloodgood, one of the examiners of this court, at his office in the city of Milwaukee, pursuant to rules 67 in equity, and the practice of this court.

Before the commissioner, Milwaukee, June 12, 1865.

Present: M. H. Carpenter, esq., of counsel for the complainant; N. J. Emmons, esq., of counsel for the defendant.

William R. Sill, being sworn, says that:

1st ques. What is your age, residence, and occupation?

Ans. Age, forty-three; I reside in Wisconsin; my occupation is civil engineer.

2d ques. How long have you practiced engineering?

Ans. Nineteen years.

3d ques. Have you been formerly examined with reference to the work done by Mr. Chamberlain prior to Oct. 1, 1857, on the western division of the La Crosse and Milwaukee railroad, and were you so examined in a suit where Newcomb Cleveland was the plaintiff?

Ans. I have and was.

4th ques. Have you heard the whole of the testimony of Hugh Lee just examined in this cause?

730 Ans. I heard all his testimony, except that given Saturday afternoon, and that I have read since this question was put me, but will further except that I have not examined the books of diagrams and exhibits produced before the examiner during Mr. Lee's examination, and testified to by him.

5th ques. Did you accompany him when he was making measurements in 1861, about which he has testified?

Ans. I was with him the principal part of the time while he was making his measurements between La Crosse and a point about four miles east of Kilbourn. I was absent a part of the time, while Mr. Lee and his party were working between Salem and Bangor; and I was also absent, I can't tell just how long, but I was absent a part of the time while he was taking his measurements between Lisbon and Kilbourn City. I think in the latter case I was absent about a day and a half. All the rest of the time I was present.

6th ques. State, if you know, whether his measurements were accurate; and state any facts or circumstances to show how far they were or were not accurate, and how far or how nearly such measurements could be accurately made at a period of four years after the work was done without access to field-notes or cross-sections?

Ans. I don't know whether his measurements were accurate or not. Not knowing how the entries were made, nor seeing how they were entered in the book, I can't tell. So far as I could judge, the measurements they attempted to make were called off correctly. I understood that Mr. Lee was attempting to measure ballast, grubbing and clearing, extra haul, solid rock, bank walls, loose rock, tunnel approaches, and was taking measures for those items only. He took no measurements to determine the amount of earth grading on the line. The measurements he took to determine the ballasting were taken by digging with a shovel into the grades to find
731 the point where the material changed. These holes were dug in some cases, perhaps, once a mile, and in some cases three or four times in a mile. Some measurements were taken for grubbing and clearing, but I paid but little attention, and don't know whether they took sufficient to determine it or not. Measures were taken by him pertaining to extra haul. In this work Mr. Lee seemed to assume that earth taken out of any particular excavation and carried into the embankment would reach to some particular point; that it would complete the embankment to some particular point. On this assumption the distances were measured. As this assumption of points was made entirely by the eye, he was liable to great errors in getting at the distance of haul. As to the measurements of solid rock, that is, of such solid rock cuts as I saw measured, (some of them I did not see,) I think Mr. Lee's associates called off their measurements correctly. Taking the points as Mr. Lee gave them for measurements, I differed with Mr. Lee very materially in the classification, as he called a great deal of material sand which I, in March, 1858, considered to be solid rock. His item of loose rock, also, I considered as solid rock. Items of bank walls I paid very little, if any, attention to; I knew it could not be measured, as by far the

larger portion of it had broken away, and had been shoved by the pressure of the embankment into the Wisconsin river. Item as to measurement of tunnel approaches, I believe the measurements to have been made as correctly as they could have been without the aid of the original notes and cross sections. I do not consider it possible to measure such work accurately after a period of four years has elapsed since the work has been done. Ballast of any kind on a road (gravel ballast I should say and mean) wastes away by use, and being moved by section or track men; and sand ballast wastes much faster than gravel. A portion of solid rock-work done by Chamberlain was of a kind of rock which disintegrates on being exposed to the weather, and the appearance of that rock was vastly different in 1861 from what it was in 1857 and 1858, at the time the work was being done.

Recess taken till 2½ p. m.

732 2½ p. m., parties appeared:

1st x-question by Mr. Carpenter in cross-examination. What is the character of the rock excavated by Chamberlain? Is it sandstone, limestone, or what other kind?

Answer. It is sand rock.

2d x-question. Do you say that sand rock, exposed to the atmosphere, grows softer and disintegrates as a general geological law?

Answer. I don't know as it does as a general geological law; that in particular instances of this work it certainly has.

3d x-question. Will you explain what causes have changed the geological law in favor of Mr. Chamberlain on this work?

Answer. I don't consider that there has been any change in geological law; but a portion of that sand rock has undergone material changes in consequence of exposure to season and frost.

4th x-question. If it is a geological law that sand rock exposed to atmosphere, seasons, rain, sun, and frost becomes harder, will you explain what has caused sand rock on this line of work to grow softer and disintegrate?

Answer. I don't know that it is a geological law, nor can I explain what causes have caused disintegration in this particular instance.

5th x-question. Has sand rock generally been understood not to disintegrate when exposed to atmosphere, or do you mean to say you do not know whether it usually does or not?

Answer. It usually does not disintegrate.

6th x-question. Can you explain, then, why sand rock has performed an unusual feat in favor of Mr. Chamberlain on this line of work?

Answer. I cannot.

733 7th x-question. Will you look at what purports to be modification of contract printed on page 41 of printed record in the Cleveland case here shown you, and say what, without any contract, would have been a fair price for doing the several items mentioned therein?

Answer. In 1857, 1858, the value of doing this work without any

contract, and to be done in reasonable time, would have been worth as follows:

Earth excavation, 35 cents per yard, with allowance for extra haul.

Rock excavation, $1 25 per cubic yard.

Tunnel work, $3 50 per cubic yard.

Arching, $10 00 per perch, with an allowance for haul of stone over 2 miles.

Haul on stone over 2 miles, 50 cents per perch per mile.

Timber work per lineal foot, 25 cents.

Packing, $1 50 per cubic yard.

Sinking shafts, $7 00 per cubic yard.

8th x-question. How much extra haul was there on the stone work at that point?

Answer. I don't know that there was any.

9th x-question. How much extra haul was there on the earth work at that point?

Answer. I can't tell.

10th x-question. Was there any?

Answer. I think there was, but can't tell positively.

11th x-question. How much, in your opinion, should be added for doing the work at the tunnel approaches, in gross, for extra haul above the specific prices fixed by you?

Answer. It was worth 1½ cents per cubic yard per hundred feet at that time.

734 12th x-question. In your opinion, would the item for extra haul at the tunnel approaches have added $5,000 to the prices named by you?

Answer. I can't say; have not thought of it for years.

13th x-question. Are you now in the employ of the Milwaukee and St. Paul Railway Company as engineer?

Answer. I am.

Adjourned.

JUNE 14, 1865.

Cross-examination of this witness continued:

14th x-question. How is the roof of the tunnel supported, and how high is the apex of the ridge above the crown or top of the tunnel?

Answer. The tunnel is in part of the natural rock, and the balance of it is supported by timbers. About one hundred and forty feet at the highest point.

15th x-question. Are the supports of the roof of the tunnel of sufficient strength to resist the weight of one hundred and forty feet in depth of sand?

Answer. They are not; but they have been sufficient to resist any weight that has come on them so far.

16th x-question. How long will it take to dissolve or disintegrate the side-slopes or side walls of the tunnel and the tunnel approaches after being subjected to the atmosphere?

Answer. I can't tell. The rock immediately about the tunnel disintegrates slowly; not near so rapidly as it has in many other portions of the line.

17th x-question. What angle of slope is necessary to retain loose sand in place without sliding?

Answer. In my opinion, about one and a half horizontal to one perpendicular.

735 18th x-question. Have you ever estimated, or has your attention been called to the fact that a thin, hard crust has formed upon the face of the sand rock on the western division since its exposure to the atmosphere?

Ans. In some instances, I think, it has been so; in others, the rock is constantly wasting away. No face has been formed.

19th x-question. How many miles of road is it usual for an assistant engineer to have charge of during the grading of the road bed upon Wisconsin railroads?

Ans. From ten to eighteen miles.

20th x-question. Is it not usual for assistant engineers to set the side or slope stakes when they make the cross-sections preparatory to breaking the surface of the ground, and was this the fact in this particular upon the western division of this road?

Ans. It is usual to set slope-stakes when they lay out the work; engineers though frequently take cross-sections, where they do not put in any slope stakes. I don't know how it was in this case, as I was not the engineer in charge.

21st x-ques. Do engineers always have test-pits dug before making estimates, based upon preliminary surveys? and if so, about how far apart?

Ans. Not always; sometimes, and sometimes not. No rule as to the distance apart. It depends upon the face of the country.

22d x-ques. Is it not the duty of the assistant engineer having charge of from ten to eighteen miles of road, during its construction, to stake out the work of all descriptions, such as foundations for bridge abutments, arched and boxed culverts, and are not cross-sections made before the surface of the ground is broken in excavations?

736 Ans. It is his duty. Cross-sections should be made before the surface of the ground is broken in all excavations.

23d x-ques. If the work as left by the contractor is not done mathematically correct in every respect, and in accordance with the manner or plan upon which it was originally laid out, can an exact calculation be made? Can an exact measurement be made from the cross-sections without remeasuring the work, as left by the contractor?

Ans. It cannot. To measure such work would require a set of cross-sections to be taken after the work is so left. In this way a correct result would be arrived at, excepting in cases where the work had varied from the original staking so much as to have been done outside of the first cross-sections.

24th x-ques. Look at diagram we will call B B, viz: the full lines *a*, *d*; *c*, *b*, *a*, representing the lines of the original cross-section, as laid out by the engineer, and being the only data in your possession, and a dotted line representing the work as done by the contractor;

now suppose you desire to ascertain the amount of work done, how would you do so, and of what service would the cross-sections be to you?

Ans. In this case we should use the original cross-section, as represented by the full lines, and which showed the original surface of the ground and depth of cutting, as laid out. After the work was done we should take the second cross-section at the same point, which second cross-section is represented here by the dotted line. From this data we can make a computation of all material that has been removed inside of the first cross-section. This computation would be strictly accurate, as we use the term, in this kind of work. The excavations done outside of the original cross-section could only be computed approximately.

24th x-question. In the case represented in the above question would the original cross-section be of any service, except to fix the top line or the original surface across the excavation?

737 Ans. It would be of no other use.

25th x-ques. In most cases after the work has been done, cannot the top or surface line be ascertained nearly enough for practical purposes from the surface of the earth left on each side of the cut, or from the surface of the rock left on each side of the cut?

Ans. I don't think it can. If a man knows that the surface that has been removed was a plane, then his estimate could be made approximately correct, but if not a plane he would be liable to err.

26th x-ques. At what distance apart have the cross-sections been made on the road between Portage and La Crosse, as a general thing?

Ans. I don't know.

27th x-ques. How far apart are they generally set upon railroads over as level a country as it is between Portage and La Crosse?

Ans. They should be in no case more than one hundred feet apart; in some cases they should be fifty, and some twenty-five, and some less, depending entirely upon the surface of the ground.

Recess taken till 2½ p. m.

28th x-ques. In measuring the line of work on a railroad one hundred miles long, would not the error arising from reconstructing the original line, by continuing the lines on the surface on both sides of the cut, be as often in favor of the contractor as against him? or in other words, would not such a measurement be sufficiently accurate for the purpose of ascertaining the work done, and as accurate as work is ordinarily measured?

Ans. In taking measurements in this way in some cases the errors, to a certain extent, would balance each other. In side-hill work, I consider that such measurements would generally be against the contractor. I do not consider them sufficiently accurate for a final estimate.

738 29 x-ques. Was the work done on this western division in such exact and mathematical conformity with the contract, and laying out of the work, that an exact estimate could be made of

the work done by Chamberlain, without measuring the work after it was left by him?

Ans. I think some of it was, and some of it was not. In the spring of 1858, the work between Portage and New Lisbon could have been measured by the use of the original cross-sections, after determining by the use of the level that the cuts had been taken to grade, and of the width required in the laying out. Borrow pits would require a second set of cross-sections to determine the quantities that had been removed from such pits. The work from New Lisbon to La Crosse was in such condition that a great many measurements had to be taken.

30 x-ques. Were the slopes in rock excavations between Portage and New Lisbon formed in such exact and mathematical conformity with the contract and laying out of the work and the width of the road bed, performed with such accuracy and conformity as above stated, that an exact estimate could be made of the work done by Chamberlain, without measuring the work after it was left by him?

Ans. I should think not in all cases. In some cases, to arrive at the amount of work done by him, it would have been necessary to take measurements from the centre line to the foot of the slope and to the top of the slope, and perhaps in some cases to intermediate points on the slope. These measurements, put on to the original cross sections, would enable an engineer to make an accurate computation of the quantity of material removed.

31 x-question. Did you ever see a railroad in Wisconsin that had been constructed by the contractor with exact mathematical conformity with the contract and the laying out of the work?

Ans. Not exactly so. I have seen them substantially so; never saw them exactly so in any State.

739 32 x-ques. In case work is left partially completed by one contractor, can it be ascertained how much work he has done? If yea, state fully what method you would pursue to ascertain it.

Ans. If work had been properly laid out, and the excavations completed so far as they had gone, then it could be accurately measured and computed from cross-sections. If it had been left in a very ragged and unfinished condition, the estimate would be only approximate.

33 x-ques. Do the original field-notes and cross-sections show any thing other than what amount of work would be done by an exact and mathematical compliance in every respect with the given plan upon which the cross-sections were made?

Ans. They do not. Where there is a difference between the staking out and the work as done, it is necessary to make a diagram of the cross-section, putting on to that the contour of the work as left, and from this compute the amount of work done.

34 x-ques. Do engineers usually know or ascertain, when making cross-sections and setting slope stakes, what kind of material will be encountered in doing the work, whether rock or earth?

Ans. They do not.

35 x-ques. Is it not customary to make a different slope in rock excavation than that of earth excavation?

Ans. It is.

36 x-ques. Along the line of this western division between Portage and La Crosse, is not the rock overlaid with earth, and are not different strata of rock usually separated by sand or earth?

Ans. These rock cuts are usually overlaid with earth. In one or two cases the different strata of rock are separated by sand,
740 but usually not.

37 x-ques. In making the cross-sections upon railroads, is it customary to dig test pits at the several cross-sections to ascertain in what cases rock would be found in the excavations, or to determine the exact surface and form of the rock found underlaying the earth?

Ans. It is not. Cross-sections are taken of the surface of the ground, then, when the earth is taken away to the rock, other cross-sections are taken to show the surface and depth of cutting of the rock.

38 x-ques. In your opinion as an engineer, would the form of sand rock excavation so change by exposure to the atmosphere for ten years that a measurement thereof could not be made as accurately as one could be made from measurements taken at the completion of the work?

Ans. My opinion, seven or eight years ago, was that the rock would retain its form. But from frequent observations since, I know that some of the rock has undergone material change, and could not be correctly measured very long after having been exposed to the atmosphere.

39 x-ques. Have you ever seen the form of the drill-holes in any of the rock cuts between Portage and New Lisbon, at the sides of the slopes, showing where the holes had been drilled for the purpose of blasting the rock?

Ans. I can't say whether I have or have not. I do not recollect.

40 x-ques. In a solid rock excavation which had not been affected by the atmosphere, and where the surface of the rock in both the slopes could be ascertained, and taking it for granted that the surface of the rock was a plane, in such case, could the amount of excavation be accurately ascertained without the aid of the original cross-sections, and ten years after the completion of the work?

Ans. It could.

741 41 x-ques. Is it not a geological law that sandstone exposed to the atmosphere becomes harder?

Ans. I don't know that it is. If it is, some of this stone or rock is an exception to the law.

(Witness is here shown a diagram marked on the face B B, and to be hereto annexed, and is asked)—

42 x-ques. Is this the diagram to which a part of your testimony in this examination relates?

Ans. It is.

NOTE.—Said diagram is to be by the examiner annexed to this deposition, marked "Exhibit B B."

(Adjourned to June 15, 1865, at 10 a. m., when the cross-examination of the witness was continued.)

43 x ques. Have you had any experience in regard to the settling of embankments, in marshes or sink holes? if yea, state fully what such effect would be on the original surface of the marsh outside of the embankment, or in other words, if any embankment of ten feet in heighth above the original surface of the marsh should during its construction settle five or six feet, what would be the effect on the original surface of the marsh outside of the embankments?

Ans. I have had considerable of such experience. The usual effect in such cases is to raise the surface of the marsh alongside of the embankment. I have known of embankments ten feet high sinking out of sight without causing any perceptible rise of the surrounding surfaces. I mean perceptible to the eye.

44 x-ques. Do you not know from your knowledge of the side stakes, the centre line stakes, the length of the culverts, the field-notes, and your general knowledge of this work, that this road was regularly laid out earthwork slope, one and one half foot base
742 to one foot rise, rock work of steeper slopes, and were not the cross-sections generally made at distance of one hundred feet?

Ans. I don't know certainly, but have reason to believe it was regularly laid out with slopes of one and one half to one, in earth excavations and embankments; in cross-sections I don't know, or don't remember if I ever have known, how often cross-sections were taken.

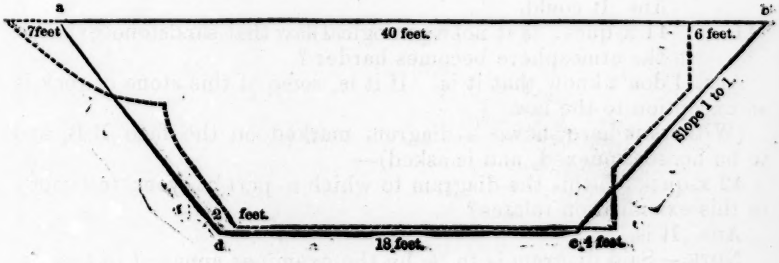
WM. R. SILL.

Taken down in writing, and, when concluded and having been read over to the witness, was by him subscribed, this 15th June, 1865, before the examiner, and such of the parties and their counsel as were in attendance.

FRANCIS BLOODGOOD,
Exam'r in Chancery.

Exhibit B B, referred to in the deposition of W. R. Sill.

Look at diagram, we will call B B, viz:



743 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Francis Bloodgood, examiner in chancery, &c., residing at the city of Milwaukee, do hereby certify that the annexed deposition of Robert Campbell is a part of the testimony of the defendant in the cause entitled in the caption thereof, taken before me pursuant to rule 67 in chancery and the rules and practice of this court, and that in the caption, body, and jurat of said deposition is included the record of all the proceedings before me at the time of the taking of the same.

In testimony whereof I have hereunto set my hand and seal this 12th July, 1865.

[SEAL.] FRANCIS BLOODGOOD,
Examiner, &c.

In the circuit court of the U. S. America in and for the district of Wisconsin.

MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.

U. S. AMERICA, *District Wisconsin, ss:*

Deposition of Robert Campbell, a witness called, sworn, and examined on behalf of the defendant before Francis Bloodgood an examiner of said court, at his office in the city of Milwaukee, pursuant to rule 67 in equity, and the rules and practice of this court.

Before the examiner, June 13, 1865. Present, M. H. Carpenter, esq., of counsel for the complainant; N. J. Emmons, esq., of counsel for defendant.

Robert Campbell called by the defendant, and sworn says:

744 1st. ques. What is your age, and residence, and your occupation or profession, and how long have you been engaged in in such occupation and profession.

Ans. I was 46 years old on May 4th last; I reside at Oshkosh, in Wisconsin; and a civil engineer; have practiced it twenty-seven years. I am at present the chief engineer of the Chicago & North Western railway, or rather of the Wisconsin division thereof.

2d. ques. Have you in your practice as such engineer been engaged in the construction of railroads?

Ans. I have.

3d ques. State briefly here, and in what manner, the character and quantities of work done by contractors, are ascertained by engineers, and what is necessary to an accurate ascertainment thereof?

Ans. It is the engineers' business to lay out the work by cross-sectioning the surface and calculating the quantities therefrom, the surface of the ground being usually so uneven as not to be ascertained in any other way accurately.

4th. ques. Have you ever had any thing to do in the capacity of an engineer on the La Crosse and Milwaukee R. R.

Ans. I have not.

5th ques. Suppose work done upon a railroad in the way of embankments, excavations of different material, ballasting, and tunnel work, including the approaches, in 1857, would it, or would it not, be possible to make an accurate measurement and estimate of such work, as to quantities and character, four years afterwards, without access to the original notes and cross-sections?

Ans. It would not be possible to make an accurate estimate
745 after a lapse of four years of any work done on railroads, for the reasons that embankments will wash away, and in some cases, where composed of sand of very fine material, the wind will affect it, and blow it away, and in some cases where the cuts have been of sand rock, or loose kind of rock, the action of the air will give them a different appearance from what they present when first broken open. In some cases in cuts, when there are heavy grades to and from them, heavy rains will wash them out, and when the grades are level the earth will accumulate and fill them up.

6th ques. Have you heard of what is known as the Fox Lake filling, spoken of, and its character described?

Ans. I have.

7th ques. Have you had experience in such work as that has been described to you to be?

Ans. I have. In three or four instances on the Northwestern R. R., at Palatine, at Wilson's crossing, Barrington, and at Flint creek.

8th ques. State what that experience has been.

Ans. All those cases had similar characteristics, but varying in depth. First a crust of from six to eight feet of black muck or earth. vegetable matter, and then a composition of water and black vegetable earth matter, commonly called muck, varying from twelve and fifteen feet to forty-three feet, as you get away from the high land it would increase in depth. At Barrington, where the original soundings were only twelve feet, I afterwards had a sounding rod made, and found soundings of forty-three feet in one place, with the usual crust of six or eight feet on the surface.

(No ninth question.)

10th ques. Did you ever in your experience meet with muck holes where there was a crust between the layers of muck, a crust
746 of hard material, which crust would be sufficient to hold a light embankment for a time, and then break away and let it down, let the embankment down?

Ans. In all those cases I have mentioned, the crust was strong enough to bear a very light embankment. In all these cases the crust was on the surface, but would immediately break through when three or four feet of embankment was put upon them. At Flint creek I found a seam of clay, two feet below the surface, of about an inch thick, and about forty feet from the centre line, which, in my opinion, had filtered through from the embankment, as there was no other clay in the neighborhood, and the surrounding material was all black muck.

11th ques. Did you ever, in taking soundings in a marsh, strike a vein of hard material, which would for a time hold the rod, and by working on that rod for a time you would break through into a second strata of sand?

Ans. I have found, in taking soundings of the Fox river at Oshkosh, such an instance.

12th ques. In answer to the fifth question, you have stated that it would not be possible to make an accurate estimate after the lapse of four years. In your opinion and judgment as an engineer, could anything like a reliable measurement be made in the case supposed?

Ans. I should not be willing to make an estimate under such circumstances, and sign it as being correct. I don't think it would be possible to make a correct estimate under such circumstances, without the original field-notes and cross-sections.

13th ques. What is the object of cross-sectioning the work?

Ans. It is done for the purpose of ascertaining the correct quantity of earth or rock to be removed.

14th ques. (The witness is here shown Book A of diagrams, referred to by Mr. Lee, and his attention called to the cross-sections on pages 1, 2, 3, 4, 5, 6, 7, and 8, and from 25 to 53, both
747 inclusive,) and is asked: Do those cross-sections indicate that the strata of rock and sandstone represented by them are perfectly plane surfaces?

Ans. They do.

15th ques. Is it usual to find those plane surfaces in a rock of that character?

Ans. It is very rare to find perfectly plane surfaces of rock anywhere.

16th ques. Suppose those cross-sections in Book A, to which your attention has been called, or the diagrams called cross-sections, to have been made four years after the work to which they purport to refer has been done, and made up from no other data than simple observation and survey, and without access to original field-notes and cross-sections; in your opinion, can the diagrams in Book A aforesaid be regarded as accurate and reliable?

Ans. I don't think they can be relied upon as an accurate data to calculate the work as originally done. On page 39 there is a plane surface of ninety-seven feet and five-tenths, and it is very rare to find such an extent of plane surface on the soil anywhere, no intermediate heights given. On page 41 there is also a plane surface of 106 feet represented, without any intermediate height given. I don't see any intermediate heights given anywhere, showing that there has been any irregularities is the original surface. I mean in any of the diagrams to which my attention was called.

(NOTE.—The complainant, in due time, objected to each and every of the foregoing questions on the ground of materiality and relevancy, but not to the form of the question.)

Cross-examination:

1st c.-ques. Have you ever examined this work at Beaver Dam?

Ans. I have not, and know nothing about it, except from hearsay.

748 2d c.-ques. Do you know anything about the manner in which the work was laid out or done on the western division of La Crosse and Milwaukee railroad except from what appears since the contractor has left it?

Ans. I do not.

3d c.-ques. Will you describe in words what is meant by a cross-section?

Ans. A cross-section is a diagram, made of the surface and depth of cutting, taken at right angles to the line of the track. It is what would be represented by passing a plane at right angles to, and perpendicular to the track. The theory of it being, that the height of each consecutive point in the natural surface of the ground at this cross-section has been ascertained.

4th c.-ques. With this, and the heighth of the road-bed, its width, and the angle of the slopes being given, forms a complete cross-section, does it not?

Ans. I believe it does.

5th x-ques. How many miles of road is it usual for assistant engineers to have charge of in the construction of Wisconsin roads?

Ans. Under me they have had charge of from 12 to 18 miles in length.

6th x-ques. How far apart are these cross-sections usually taken in laying out work on a railroad in Wisconsin?

Ans. That depends altogether on the surface of the ground. What is usually called a station is one hundred feet apart; or rather, a station is a point, and they are usually one hundred feet apart. Where the surface of the ground is comparatively or nearly level it is usual to cross-section once in every hundred feet, but when the surface is uneven it is considered necessary to cross-section wherever the inequality accrues.

7th x-ques. Do you know anything of the character of this
749 western division work from personal observation?

Ans. I do not.

8th x-ques. In making these cross-sections in a distance of 20 feet across the top of the cross-section, the theory being that the heighth of every consecutive mathematical point is exactly ascertained, how many of these points are usually ascertained, as a fact?

Ans. If I laid out the work I should ascertain every point, every consecutive point, in fact, as near as science can give it.

9th x-ques. How near can science ascertain it?

(Question waived.)

10th x-ques. Will you explain here, and now, the theory upon which all measurements of excavations are made; and explain whether the result arrived at, with the benefit of cross-sections, original notes, and personal observation, is a mathematically accurate result, or only an approximation?

Ans. I don't believe that any two engineers, cross-sectioning the same piece of work, and totally obliterating each other's marks, and destroying each others notes, can ascertain to a decimal the precise quantity in any figure. They could not arrive at the same quantity. It would be a miracle if their calculations came out precisely alike. A piece of work is cross-sectioned by driving in pegs or plugs at each inequality, as near as the judgment of the men so laying out the work will admit, and taking heighths at such points, with the level, so as to ascertain the precise height of such points, and from such heighths and distances calculating the quantities contained in the figure.

11th x-ques. After ascertaining the figure in two cross-sections, is not the calculation of quantity between the cross-sections made by calculating the solid contents of the figure between the two cross-sections, upon the supposition that that figure, between the
750 cross-sections, is bounded by right lines drawn from all the points in the figure of one cross-section to the points in the figure of the other?

Ans. It is the business of the person or engineer laying out the work to ascertain, with his level, and find out whether there are any inequalities between the cross-sections.

12th x-ques. In what way would he ascertain these irregularities, except by making an intermediate cross-section?

Ans. No other way.

13th x-ques. When the requisite number of cross-sections have been obtained in the opinion of the engineer, is there any other way of computing the contents between these cross-sections than upon the theory mentioned in the 11th cross-question?

Ans. That is the most accurate way.

14th x-question. Was it, in your opinion, ever true in fact, that any such precise figure could be found between two cross-sections as science assumes to be there for the purpose of calculation?

Ans. Never anything so perfect as perfectly straight lines on the natural surface of the land.

15th x-ques. Do you mean there never was such a thing as a straight line over land, or do you mean that the different materials, rock, clay, sand, &c., are not found limited by right lines, and in the form of geometrical figures?

Ans. I mean that, in my opinion, there are never straight lines, or perfectly plane surfaces, on the soil.

16th x-ques. How is this, as far into the earth as you have ever been? Have you ever seen any rock or other material excavated for the bed of a railroad which was found with perfectly plane surfaces, or in perfect geometrical form?

751 Ans. I never have.

17th x-ques. Then the most accurate calculations that can be made of the work done in constructing a railroad is no more than an approximation to the true result, is it?

Ans. We can arrive at as correct a result as human nature will permit.

18th x-question. Now, if human nature will not permit a perfectly

accurate result, is not the nearest approach to an accurate result, which is attainable, an approximation to the true result?

Ans. It is.

19th x-ques. In your opinion, if a hundred different parties of engineers, each one skilled and competent to the work, were to go in succession over the line of a railroad one hundred miles long, before the work was commenced, making field-notes, cross-sections, and doing everything else usually done on such work, and the same parties went over the work immediately after its completion by the contractor, and with the aid of their field-notes and cross-sections, computed the amount of work done, all acting in good faith, and all having equal means of arriving at the true result, and each ignorant of what had been done by the other, do you believe it would be possible that the estimates of any two of the parties should exactly agree?

Ans. I don't believe it would be likely that any two would precisely agree, there might be a slight fraction of difference between them. Some of them might come within one hundred yards of each other in their calculations.

20th x-question. Have you examined the cross-sections represented in the Book A of diagrams?

Ans. I have.

21st x-ques. So far as you can determine from examining them, do they not appear to be accurately and properly made?

752 Ans. They do.

22d x-ques. Is it not a geological law that sand-rock when exposed to the atmosphere becomes harder?

Ans. Some kinds will grow harder, while others will crumble all to pieces.

23d x-ques. Explain what grows harder and what crumbles to pieces?

Ans. I am not sufficient a geologist to determine this; I only know that, in my experience, some grow harder and some crumble to pieces.

(A recess taken until 2 p. m., when the cross-examination of this witness was continued.)

24th x-ques. Is it not usual for assistant engineers to set the side or slope stakes, when they make the cross-sections, preparatory to breaking the surface of the ground, and what was the fact in this particular upon the western division of this road?

Ans. It is usual for assistant engineers, or those in charge of the road, to stake it out when they cross-section it. I don't know what was done on this road in question.

25th x-ques. Do engineers always dig test pits before making estimates based upon preliminary surveys? and were such pits dug upon this western division? and if so, how far apart?

Ans. No; they do not. I know nothing about how it was done on this road.

26th x-ques. Is it not the duty of the assistant engineer or engineer having charge of a section of railroad during its construction, to stake

out the work of all discriptions, such as foundations for bridges, abutments, arched and boxed culverts, and are not cross-sections made before the surface of the ground is broken?

753 Ans. It is the duty of engineers in charge of the road to stake it out for all purposes. Cross-sections should always be made before the surface of the ground is broken.

27th x-ques. Are not the cross-sections made according to a given plan?

Ans. I don't think they can be. They should be made according to a system, not a plan.

28th x-ques. Are they not laid out according to the specifications of the contract, according to the width of the road bed and the slopes?

Ans. They are laid out according to the specifications, width of road bed, and the slopes.

29th x-ques. If the work, as left by the contractor, is not done mathematically correct in every respect, and the slopes left to the exact angle without projections of any kind, can an exact calculation or exact measurement be made from the cross-sections without re-measuring the work as left by the contractor?

Ans. No.

30th x-ques. Did you ever see a railroad, in Wisconsin, that had been constructed by the engineer with exact mathematical conformity with the contract and the laying out of the work?

Ans. Engineers don't usually build roads.

31st x-ques. Did you ever see a railroad, in Wisconsin, that had been constructed by the contractor with exact mathematical conformity with the contract and the laying out of the work?

Ans. All railroads are supposed to be constructed mathematically, and in accordance with the specifications and contracts; all

754 those in Wisconsin have been so constructed that I have any knowledge of.

32d x-ques. Is it possible for a contractor to excavate a rock excavation, and have the slopes as they were cross-sectioned and laid out by the engineer?

Ans. It is.

33d x-ques. Can he excavate or grade the slopes to a true plane?

Ans. He can, as near as mechanical genius can get at that work.

34th x-ques. When the rock has to be removed by means of powder, do you mean to say that the slopes would be left on a true plane, or when loose rock occurs liable to tumble out of the slopes, would the slopes be left on a true plane?

Ans. It could not be taken out so as to leave a true plane. The slope would have been left in a rough state.

35th x-ques. In case work has been left partially completed by one contractor, can it be ascertained how much work he has done? if yea, state what method you would pursue to ascertain it.

Ans. It can be ascertained mathematically correct. I would go to work and re-cross-section and calculate the quantity taken out.

36th x-ques. Do the original field-notes and cross-sections show any thing other than what am't of work would be done by an exact and

mathematical compliance in every respect with the mode and manner in which the cross-sections were made?

Ans. They do not; that is, they should not.

37th x-ques. If the work upon the road had not been in fact done in compliance with the mode and manner upon which the cross-
755 sections were made, would there be any way to ascertain the am't of work done, except by remeasuring the work, after it was left by the contract?

Ans. There would not.

38th x-ques. Do engineers usually know or ascertain, when making cross-sections and setting slope stakes, what kind of material will be encountered in doing the work below the natural surface, whether rock or earth?

Ans. Not always to a certainty.

39th x-ques. How would they arrive at this certainty?

Ans. Either by digging test pits, or in the progress of the work as it showed itself.

40th x-ques. Is it not customary to make a different slope in rock excavation than that of earth excavation?

Ans. It is.

41st x-ques. If it was not ascertained when the cross-sections were made; in what places rock would be found, or what was the precise surface of the rock beneath, would the original cross-sections be of any and what service in computing the am't of rock and earth excavation in the work?

Ans. The cross-ssctions would be of use only in determining the quantity of earth removed from the work. It would then be necessary for the engineer in charge, to re-lay out the work to ascertain the quantity of rock to be removed; that is, he should re-cross-section for the rock because it has different slopes from the earth.

42d x-ques. In the case supposed in the last preceding question, would it be possible, after the work was left by the contractor, to estimate these amounts, earth and rock respectively, except by
756 a measurement after the work was left; and could it be determined by the cross-sections, without such measurement, how much rock had been excavated, and how much earth had been excavated, separately, at any given cross-section, or between any two cross-sections?

Ans. Not without the original cross-sections of the rock and the earth.

43d x-ques. If upon a division or subdivision of a road of 10 to 18 miles in length, which the assistant engineer had charge of during its construction, and upon which several rock cuts occur, and several miles between each rock excavation, and upon which a large force was employed in grading the road bed, would it not frequently occur that the original surface of the rock had been removed during the absence of the engineer, while he was engaged upon other portions of the line, or in making his monthly estimates, and calculating the same in his office?

Ans. It might be that some of the rock would be removed during his absence.

44th x-ques. In such a case, when the original surface of the rock had been removed during the absence of the engineer having charge of the work, how would you arive at the work done by the contractor?

Ans. Contractors are never allowed to remove either earth or rock until it is first cross-sectioned, hence having the cross-sections, there is no difficulty in determining the am't removed.

45th x-ques. Look at Book A of diagrams, upon pages 63 to 69, both inclusive, where strata of soft sand rock, that is, where one or more strata are represented in the road bed, varying from four-tenths of a foot to two feet and eight-tenths in thickness, and where strata of sand and loam are represented as overlaying and underlaying the strata of rock, averaging from three to six feet in depth, would it be likely that a contractor having a large force employed would
757 suspend operations when he encountered the strata of rock until the engineer having charge of the work, could be found and brought on to the work to take the cross-sections?

Ans. My experience in such matters is that contractors are very careful not to remove any rock until it is cross-sectioned. I don't know that I can give any better answer. The contractors are very careful not to remove any rock till it is put in such shape that the quantity of it can be ascertained.

46th x-ques. Can these several strata of rock, as represented, be estimated or measured after having been removed from the road bed, the exact thickness of each appearing in the sides of the slopes on either side of the road bed, and supposing that they crossed the road bed on a true plane? and if not, state your reasons.

Answer. The quantity of each could be ascertained accurately, provided they did cross the road on a plane.

Re-direct:

In saying that original cross-sections are necessary in estimating quantities, do you also refer to and include the re-cross-sections where new or unanticipated materials have been encountered in excavating?

Ans. I do. It is necessary to have them both to arrive at the proper quantity.

Re-cross-examination:

1st re-x-ques. Where a road bed through rock has been excavated and entirely different from the plan or mode in which it was originally or subsequently laid out, where the road bed was laid out for a width of 18 feet at sub-grade, and the slope with a base of one foot base for one foot perpendicular rise, and where the road bed in such places was excavated to a width of thirty feet, and the slopes varying
758 from a matter of three or four inches in one foot perpendicular rise, and at other places, in the same cross-section, have a base of seven feet in two or three perpendicular rise, what benefit

would your original or any subsequent cross-sections that might have been taken at that particular point be in arriving at the amount of work done? And how would you proceed to ascertain the amount done, under such circumstances?

Ans. I think the original cross-sections would be of very great service in determining the original surface, and would be good data on which to base your calculations, in order to ascertain the quantity taken out. Under the circumstances mentioned, I would proceed thus to ascertain the amount of work done: I would first calculate the original cross-sections, then make a diagram of the portion estimated outside of it, ascertain the figure of such excavation, and calculate accordingly.

ROBT. CAMPBELL.

Taken down in writing, and, when concluded, read over to the witness, and by him subscribed in the presence of the examiner and such of the parties and their counsel as were in attendance, this 13th June, 1865.

FRANCIS BLOODGOOD,
Examiner, &c.

Copy of assignment of Chamberlain lease.

Whereas the La Crosse and Milwaukee Railroad Company were, on the twenty-sixth day of September, A. D. 1857, indebted to Selah Chamberlain in the sum of over five hundred thousand dollars, to secure the payment of which said company on that day, by an instrument in writing executed by said company and said Chamberlain, sold and conveyed to said Chamberlain all its personal property of every name, kind, and description in the State of Wisconsin,
759 except such as was used in and was appurtenent to the Watertown division of the La Crosse and Milwaukee railroad, and by said instrument in writing did also lease and let to the said Chamberlain, from and after the thirtieth day of September, in the year 1857, for an indefinite term of time, to be determined in the manner hereinafter specified, its entire railroad and railroad route, from the city of Milwaukee, by way of Horicon and Portage City, to La Crosse, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description, and all the rights, franchises, and privileges of said railroad company, to receive the tolls and income therefrom, and after paying interest on prior liens on said property, to apply the rest and residue of said net receipts in payment of the said indebtedness of said company to said Chamberlain, and that when said indebtedness was fully paid, said lease should cease and determine.

And whereas a large proportion of said indebtedness to said Chamberlain, amounting to about the sum of five thousand dollars, still remains due and unpaid to said Chamberlain, which said indebtedness said Chamberlain has sold and conveyed to the Milwaukee and St. Paul Railway Company by an assignment bearing even date herewith.

And whereas it was understood and agreed that said Milwaukee and St. Paul Railway Company should have all the benefit and advantage of said lease for the purpose of securing the said indebtedness so remaining due:

Now, therefore, be it known that I, the said Selah Chamberlain, in case the possession of said road, or any part or portion thereof, shall at any time be decided or adjudged to belong to me, the said Chamberlain, under and by virtue of said lease, am held and bound unto the Milwaukee and St. Paul Railway Company to accept said position of lessee, take possession of said road or such portion thereof as I may of right take possession as such lessee under said lease, and hold and operate the same as in the said lease provided, and after paying and discharging the trusts therein named, to pay over to the said Milwaukee and St. Paul Railway Company all the rest and residue of the net receipts arising from the operation of said road, it being understood that said Milwaukee and St. Paul Railway Company are to hold and save me harmless from all loss, cost, or damage in executing said trust, and that I am to have a reasonable compensation therefor.

760 In witness whereof I have hereunto set my hand, this twenty-seventh day of June, A. D. 1863.

S. CHAMBERLAIN.

[2 U. S. revenue stamps, $50 each, cancelled.]

Copy of assignment of Chamberlain judgment.

The district court of the United States for the district of Wisconsin.

SELAH CHAMBERLAIN
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company.

Judgment entered upon warrant of attorney, and docketed October 2d, 1857, for $629,089 72-100 damages, besides costs of suit.

In consideration of one hundred thousand dollars of the first mortgage bonds of the Milwaukee and St. Paul Railway Company, two hundred thousand dollars of the full paid preferred stock of said company, and two hundred thousand dollars of the income bonds of said corporation to me paid, I do hereby sell, assign, and transfer to the Milwaukee and St. Paul Railway Company all my right, title, and interest in and to the above-mentioned judgment, hereby authorizing the said corporation to collect and enforce payment thereof in my name or otherwise, but at its own cost and charges.

And I do hereby, for the considerations aforesaid, also sell, transfer, and assign to said company all my claims and demands against the La Crosse and Milwaukee Railroad Company, except such second mortgage eastern division bonds so called, as I may have or be interested in, and excepting also a certain judgment recovered in the name of Newcomb Cleveland, plaintiff, against the La Crosse and Milwaukee Railroad Company, on or about the seventh day of October, A. D.

1857, in the said district court, of which claims and demands hereby sold and assigned, or intended so to be, a portion thereof constituted the consideration of said judgment hereby assigned, and other portions thereof was for work, labor, and materials done for and furnished to the La Crosse and Milwaukee Railroad Company.

761 The judgment hereby assigned I claim became, at the date of its entry a lien upon the eastern division of the La Crosse and Milwaukee railroad, and I also claim that it is a lien upon that part of the Milwaukee and Western railroad from the junction to Columbus.

This assignment of the judgment aforesaid, however, is made and accepted upon the express understanding and agreement that the Cleveland judgment aforesaid, excepted from this transfer, shall have the priority of lien upon, and payment from, any property found or means from which said judgments are or may be entitled to be paid, and that all money or means realized by virtue of the lien of said judgments, or either of them, so far as may be necessary for that purpose, shall be first applied to the satisfaction of the unpaid balance of the said Cleveland judgment.

In witness whereof I have hereto set my hand and seal, this 27th day of June, 1863.

[SEAL.] S. CHAMBERLAIN.

[1 U. S. revenue stamp, $10.]
[2 U. S. revenue stamps, 5 cents each.]
[24 U. S. revenue stamps, $10 each.]

Stipulation.

Circuit court of the United States, district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.

It is stipulated that upon the hearing of this cause the defendant may read the testimony of Selah Chamberlain and Daniel L. Wells and Henry L. Palmer, taken before the special masters, Jerome R. Brigham, Winfield Smith, and Increase A. Lapham, upon an order of reference made in a certain cause in the district court of the United States for the district of Wisconsin, wherein Green C. Bronson and James T. Soutter were complainants and the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, and others, were defendants, subject to any objection thereto which the complainant herein might make if said parties were called again personally to testify; this stipulation being made simply to avoid the necessity of re-examining the said Chamberlain and Wells in detail as to the matters about which they have testified; it being further understood that the complainant shall have opportunity to further examine said Chamberlain, Wells, and Palmer, if counsel see fit.

M. H. CARPENTER,
Sol. for Compl't.

762 *Deposition of S. Chamberlain, referred to in the foregoing stipulation.*

Selah Chamberlain, one of the defendants, being produced, sworn, and examined, says:

Question. Does the income account, now shown to you and marked Exhibit No. 1, as explained by the testimony of the witness, Dwight W. Keyes, show a truthful statement of the income and expenses of the La Crosse and Milwaukee railroad while you were in possession, from the first of October, 1857, to the first of December, 1859, so far as you know, or have reason to believe, and will you state your means of knowledge on the subject?

Answer. It does. I attended to the business while the road was in my possession, and often examined the accounts, vouchers, and books, and I believe that they were all kept correctly; and this paper shows the result from the books. There was no income from the road of any kind which did not go upon the books. The sums stated as disbursements were faithfully and truly disbursed in the manner shown by the accounts, so far as I know. I kept close watch over the whole business, giving my whole attention to it, being determined to save something out of it, if possible. The system of keeping the accounts was about the same then as now, and, I think, there are no undiscovered errors. I know that I received no more from the road than is charged to me on the books.

At the time the estimate was made about the first of October, 1857, I claimed and believed that the work done by me had been largely under-estimated. I also believe that the re-estimate made by Sill and Woodward is on some items too low. The reason for that is, that I was on the work all the time; had made it my business to attend to the work; had the profiles, and knew approximately the amount of work done. In the last estimate the one item of grubbing and clearing was estimated too low by several thousand dollars.

The $5,000 draft, heretofore testified to by Keyes, was charged to me in account, never credited to me, and was never paid, because the company notified me it had no funds in the drawer's hands,
763 and requested me not to present it, and I did not. No part of it has been paid.

I know the work of getting the engine and cars over the Wisconsin river was done by me at the urgent request of the La Crosse and Milwaukee Railroad Company. They agreed to pay me the cash disbursed and twenty-five per cent. for furnishing men and tools, for superintendence, commission, and profit.

Mr. Daniel L. Wells was our general manager on the road, and he superintended this work for me. The bills were usually brought in at the end of the month, and when brought in, if correct, they were certified by the engineer, and handed to me to bring here for settlement with the company. I believe the amount of the charge to be correct. It was not included in our settlement made at the time of the judgment, as I think the work was then going on. No part of it has ever been paid. The company was in a great hurry then to get their road in running order.

The railroad was completed by me from Portage to New Lisbon, and therefore the item of $56,500 for completing it, estimated by the chief engineer at the time of the judgment, is due to me. No part of it has ever been paid. The gravelling between Milwaukee and Beaver Dam was done under a contract between the company and myself, dated the 26th of September, 1857. The exact number of yards I do not know, except from the estimate of the chief engineer. I believe it to be correct, and no part of it has been paid. The chief engineer was in the employ of the La Crosse and Milwaukee Railroad Company, and was never in my employ; nor did he receive at any time from me any compensation or remuneration. Mr. Stoughton received from me $200 or $300 at the end of his term, after the road was completed to La Crosse, which the company then owed him, and I paid him at their request, (they having no money then,) and charged the company. He had no interest in the contracts, or any of them, and had no pecuniary connection with me or my business. I know we repaired the gravel cars, and that the bills came in, and I was never paid for the work. I believe the bills to be correct. My instructions were to make out no bills but what were correct. The work was done under an arrangement between the company and myself that I should repair them, and be paid the disbursements and 25 per cent. on the amount. The gravel cars were at the gravel
764 pits, some 85 miles from Milwaukee at Whitman's island, so-called, and they could not be brought in here without great trouble and expense, and without delaying our men. The repairs were made more or less during the whole time that the cars were in use there. We erected a shop there for the purpose. We had thirty regular dump gravel cars, and some platform cars besides.

Mr. Boomer had some stone on hand after completing the Kilbourn City bridge, and he had stonecutters there who had been to work on the bridge. We bought the stone of him, hired him to cut it, and, according to the books, so much money was paid him for it. I did not in person pay it, but I allowed the amount $1,089 81 as paid, receiving the voucher for that sum, and I have no doubt it was paid. I never got any part of it back. I make no charge for commission or profit on it. I know that the money was paid out of my funds, (derived from the receipts of the La Crosse and Milwaukee Railroad,) for interest, sinking fund, exchange and advertising, as stated in Mr. Keyes' testimony, which I heard. I have never had any payment except by charging it in the account. I was present part of the time when the work was done of getting cars and engine over the dividing ridge. We laid a track over the hill, and had blocks, tackle, ropes, and tools, and we hauled a passenger engine and cars over, so that the company might use them the other side of the tunnel for conveying passengers before the tunnel was completed. It cost the amount charged, $53, and there was no profit to me on the work. The charge of $76 58 for lumber for water tank was paid for the company out of my money, and I never got any of it back. That is all I know personally in regard to it. We had chairs and spikes left after completing the road, which were used by the repair men in repairing the

road. The instructions were, that the foreman of the repair gang should take them as he needed them, and make returns of the amount, and the amount returned was $1,116 30 for which I never got any pay; there was no profit to me on them. The different men who used them took them.

My contract for completing the road to La Crosse (from Tomah) included the road to the river at La Crosse. The depot was afterwards located at that point, and in order to work the road, the
765 track had to be extended south along the river between an eighth and a quarter of a mile, for which I charged only the actual amount paid out. That track is now in use and is indispensable to the operation of the road at that point. I paid out for the depot buildings at La Crosse $12,190 95, charging no profit or commission. I know of Mr. Keyes paying out most of the money charged as paid for right of way, being present frequently, and I, myself, negotiated the settlements in some cases. I purchased the cars from Morrell & Bowen, for which I have paid $11,115 45, and the cars are now in use on the road. The amount of $3,236 52 was paid to Jacob A. Hoover for a balance of purchase money on a lot which the company had contracted to buy of him in Milwaukee, because he had obtained an injunction preventing the cars from running over the lot, on account of the non-payment of the money. So far as I know, the statement in Mr. Keyes' testimony as to the amount of money charged to me as receipts of the road before 1st December, 1859, and actually collected by Prentiss Dow, $27,302 10, is correct; also relating to the disbursements made by him, Dow, on account of operating expenses previous to December 1st, 1859, which had been credited to me, $75,113 23. I paid him, however, myself $11,460 00, and I paid a note to the New England Car Spring Co. of $3,080 26, which Dow was to pay, and was credited for, and for which I was not credited. I also paid $4,924 54 State taxes which is not credited to me, but is credited, I suppose, to Mr. Dow as paid by him. These payments were all made during the month of December, 1859, and therefore they do not appear on the books kept by me while in possession, nor are they included in the statement Exhibit No. 1.

I have charged no percentage, commission, nor profits on the work done or disbursements made by me for the road after I took possession as lessee, under the mortgage or lease, on account of the provisions of that instrument, by which I was to have twelve per cent. interest on the amounts due me, and also $200,000 stipulated damages. I deemed, and still believe the purchase of the steamboat Keokuk of the greatest importance to the road, and the result has shown it. It was necessary in order to make the road worth anything for through business. Mr. Goodrich has explained the matter as fully as I could
766 do. The boat only ran about two months, and did not make any money; she had to compete with the other boats, and to carry at reduced river rates. There is a matter yet unsettled connected with her earnings, and my impression is that there was a small loss on the season's business. There were bills to pay not included in the clerk's statement, which, I think, overbalanced the ap-

parent profit. I was not in possession of the road next season, and the boat did not run. I made an arrangement to sell the boat that season, but the purchaser refused to carry it out, and she was not sole until the spring of 1861, I think in March, when I could get no more for her than $13,000. I paid $24,000 for her out of my own money, and could then get her for no less. I made the best bargain for her that I could. The only object I had in purchasing the boat was to protect the road, and enable it to make money. I did not expect to make anything off the boat.

S. CHAMBERLAIN.

Selah Chamberlain recalled, and further examined on his own behalf, answers and says:

The amount estimated by Mr. Woodward as due to me on the first of October, 1857, was $1,076,450. I claimed that the estimate was too small.

A judgment was entered in my favor against the La Crosse and Milwaukee Railroad Company in this court, on or about the 2d day of October, 1857, on a note given to me by that company on the first day of October, 1857, for $629,089 72. The amount of that note was arrived at in this way: My account, herewith produced, (marked Exhibit No. 10, and hereto attached,) was settled by the company on the first of October, 1857, and the note given to me for the amount of the true balance shown. The balance of $110,366 72, was due me on work done on the eastern division, and the other balance of $518,723 was on work done on the western division. I claimed that more was due to me than was allowed to me in this settlement by the company. The work had been done under two contracts, one for the eastern and one for the western division. Approximate estimates had been made monthly by the engineers of the company in charge of the work. I, as a matter of course, could not know whether those
767 estimates were accurate or not. On them I received payment in money and in promissory notes of the company, as appears in this account, marked Exhibit No. 10. On the failure of the company, in the last of September, 1857. I returned to them their unpaid notes, for which they gave me credit according to this account, and they gave me a note, as I have stated, for the whole amount at that time found to be due. In this account there is an item of $4,768 65 debited to me, which had been entered on the company's books to the debit of Chamberlain & Alden by mistake, as the work was done by me, and the amount paid should have been charged to me. It was really one item of work which was wrongly credited to them after their account had been settled, thus showing a balance to that amount in Chamberlain & Alden's favor on the company's books.

This account so settled was just and true in every particular, both as to the credits and debits to the best of my knowledge and belief, except that I had done more work than the company gave me credit for, and should have been allowed therefor in the settlement. This was the amount due me for work done, materials furnished, and money paid, exclusive of any claim for damages on account of suspension of the work.

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This account so settled was just and true in every particular, both as to the credits and debits to the best of my knowledge and belief, except that I had done more work than the company gave me credit for, and should have been allowed therefor in the settlement. This was the amount due me for work done, materials furnished, and money paid, exclusive of any claim for damages on account of suspension of the work.

In the month of February, 1857, (February 25th,) I applied to the railroad company for one hundred and fifty thousand dollars of the land grant bonds, with privileged stock at eighty per cent. on the par value of the bonds which were to be deducted from the amount of my final estimate on the completion of the road to La Crosse. On this application the company delivered to me in bonds and stock one hundred and nine thousand and some odd dollars. This amount, on my entering into a new contract for completing the road from Tomah to La Crosse, about 1st January, 1858, was returned to the company to balance the account. It was agreed in that new contract that I should return this amount to the company, and I accordingly did so.

In reference to the amount of $200,000 allowed me by the company (as pr. Exhibit No. 4) for the supervision of the work on the road, the work was suspended by order of the company on or about the twenty-third day of September, 1857, and was never resumed under either of the contracts then in force. I claimed at that time that by the terms of the contract the company was
768 bound to pay me the balance then due to me, and to give me before supending the work the thirty days' notice specified in the contract. They admitted that they ought to do so, but they alleged that they could not pay me the balance due me, nor any part of it. We had a good deal of discussion about the matter. I claimed a much larger sum than $200,000 for the suspension of the work, and for the failure then to pay cash. I had a large force of men and horses, tools, machinery, and other materials then on the line for completing the road. I also had sub-contractors at work on various parts of the line, with whom I had to settle, and whom I had to pay in full the retained percentage, being the full amount for work done and materials furnished, settling with them the best way I could. In some cases I had to buy their materials, tools, horses, carts, shanties. The first work done by them, and that which they had then done, was the easiest part of the work, but I had to pay them full price for it, so that I should have had to pay much more to another contractor to finish the work than they were by their contracts bound to do it for. When I entered into new contracts for the completion of the road from the junction (Tomah) to La Crosse, the board of directors claimed that inasmuch as I had received an allowance of $200,000 for the suspension of the work on the contract of 20 January, 1857, that I ought to take the new contract at a price much below the former contract price, which I did. I took the work more than $300,000 less than I would have been entitled to for the same work under the contract of 20 January, 1857. The indebtedness of the company to me, which I agreed to take out of the earnings of the road, was then all due to me, and the failure to pay it damaged me more than $200,000. If it had been then paid promptly I should have saved more than the $200,000. I devoted my time to running the road under the lease or mortgage from October 1st, 1857, to about June 9th, 1860. Mr. Dow took the receipts and made all disbursements (as agent for the trustees in the mortgage) after December 1st, 1859, but I remained in possession of and running the road, for which I was allowed

no compensation, and have been paid nothing. I have charged nothing for those services in addition to the amount of $200,000
769 stipulated damages. I commenced work again on the road, but under a new contract, in the month of March, 1858.

At the time the damages were allowed to me I agreed to take $200,000 of the second mortgage bonds of the company at fifty cents on the dollar. Two hundred of the bonds, making the amount, were sent to me from New York here, to apply on those damages, and were charged to me on the company's books as $100,000 cash. These are the same bonds referred to in my answers filed in these causes. I have been trying ever since I received them to sell them for fifty cents on the dollar, but have never been able to do it.

S. CHAMBERLAIN.

Selah Chamberlain, defendant, being recalled, says:

A suit has been brought against me in the United States district court for Wisconsin by Eighme, for the infringement of Tanner's patent for car brakes (of which said Eighme claims to be owner) on the La Crosse and Milwaukee railroad while I was running it under my lease or mortgage. The La Crosse and Milwaukee Railroad Company had bought the right to use the patent on that road, but Eighme claims that only the corporation had the right to use the patent, that I had no right to use it, and hence he claims damages of me for using the patent. The amount of the claim I do not remember, but it appears in the papers on file in the suit. His right to recover remains undetermined.

A suit has also been brought against me by Erwin McCall in the circuit court of Columbia county, Wisconsin, to recover damages for the killing of horses alleged to be injured on the La Crosse and Milwaukee railroad, while the same was in my possession under the lease or mortgage. That suit is still pending and undetermined. One D. J. M. Loop has also brought a suit against me in the circuit court of Columbia county for taking gravel for ballasting or repairing the road, from ground claimed to be owned by him, which suit is still pending. I claim and believe that the railroad company directed my agents to take this gravel, asserting their right to do so. The work
770 was done by a sub-contractor, and was estimated by the company's engineers, and it must have been cross-sectioned by them before any gravel was taken.

Cross-examined:

There was never any contract between me and the La Crosse & Milwaukee Railroad Company as to the purchase of the steamboat Keokuk. There was no such company that I know of, then acting or contracting. The earnings of the boat were not kept by me as receipts of that company, but entirely distinct from them. I bought the boat of the Rapids Packet Company for $24,000. I sold it to the Dunlieth Packet Company for $13,000, as appraised by Capt. Ward of St. Louis. I am the equitable owner of the judgment rendered in favor of Newcomb Cleveland against the La Crosse & Milwaukee

Railroad Company on the 7th day of October, 1857. I have been the owner of that judgment since the second day of March, 1859. It having then been purchased by James B. Cross for me. The Hoover deed was made to me to secure me for the money paid by me. The first contract I ever had with the La Crosse & Milwaukee R. R. Company is dated 20 November, 1856, for ballasting between Beaver Dam and Portage City. It was signed by Messrs. Kneeland, and negotiated by me with the board of directors.

Question. Was any officer, director, or agent of said company, or any other person or persons than yourself, directly or indirectly interested in, or did any such person ever directly or indirectly have or receive any benefit or advantage from the said contract of 20 November, 1856?

Answer. No officer of the railroad company had any interest either directly or indirectly in the contract, but Mr. Daniel L. Wells had a small interest in the contract by a private arrangement with me, and and no other person had any. The next contract I had with the company was dated 20 January, 1857.

Question. I repeat the same question with reference to the contract of 20 January, 1857, which I put in relation to the contract of 20 November, 1856.

771 The answer is the same as to the last question. There was an addition to the contract of 20 January, 1857, dated 30 April, 1857, changing the work at the ridge from a through cut to a tunnel. These are all the contracts which I had with the company up to the second of October, 1857, and under these I did all the work for which I now have claims against the company, except the extra work provided for in no contract. The ballasting on the western division was done by order of the company engineers without any written contract, and the work was included in the final estimate, which went into the judgment.

Question. Did any officer, director, or agent of said railroad company, or any person who had been such officer, director, or agent, ever in any manner, directly or indirectly, have any fee, reward, compensation, present, or gratuity, or in any way or manner profit by, or be benefited on account of either of said contracts with the said company.

Answer. Not to my knowledge. I never paid them anything, and have no knowledge of their ever receiving any benefit.

Question. Have you any reason to believe that any such person received any such benefit?

Answer. I have not.

Question. Is there any contract, understanding, express or implied, declared or honorary, that any such person ever shall at any time, or upon any event or contingency, have or receive any benefit or advantage out of, or on account of, the avails of said contracts?

Answer. There is not. I had a very large force employed in September, 1857. I suppose equal to 1,500 or 2,000 men. I can't state the amount I paid out in September. I did not get my pay, and did not therefore pay them all. I should think that my expenses

for the month of September would be between $80,000 and $100,000. The work was suspended, and never resumed under the same contract. The men employed in September, 1857, were discharged
772 then, and were not paid for labor afterwards, except those who were retained to take care of the teams and other property on the line.

Question. Will you state, estimating as nearly as you can, the several items constituting what you claimed to be the damage suffered by you on the suspension of the work on the 23d of September, 1857?

Answer. The first great item is the stopping of the work without notice, and not paying me, so that I had to leave the men unpaid. Another item was the agreement, on my part, to finish the road to New Lisbon, which I made in part consideration of the $200,000. On the suspension of the work I had a large quantity of horses, carts, tools, shanties, implements, and materials of all kinds for the completion of the road, which were thrown idle, and made comparatively worthless. The horses would eat their heads off in a little while. Another item was the profits I could have made had I gone on and completed the road under the contract of 20 January, 1857. I had to settle with the sub-contractors and pay them full prices for all the work done—in many instances purchase their shanties, horses, and tools, when the work which they had done was the easiest and cheapest part of the work. I think we had as large a force employed in September as could be profitably employed on the road. The company was crowding us all the time to get the road done to Tomah, so that they could make a sale of their land grant bonds. Keeping the horses and teamsters to take care of them for thirty days would not cost over $7,500 or $8,000. The engineer's estimate on the first of October, if it had been correct, would show what the company owed me after deducting from the estimate the withheld percentage. My books show all the money which has been paid me from time to time by the La Crosse Railroad Company. The amounts are the same as stated in the account produced here, marked "Exhibit No. 10." The judgment was purchased of Cleveland by James B. Cross at the request of my counsel. The notes of James B. Cross, indorsed by Clark Shepardson, were given for the judgment. Cross held the judgment as security for himself and Shepardson, (together with other securities,) until the notes given to Mr. Cleveland should be paid by me, which I agreed to do; upon doing so I was to have the judgment.

I have made the payments for the judgment so far as they have
773 been made, and am under obligations to pay the remainder, the judgment still standing pledged for the unpaid balance. The consideration for the judgment I have paid, and am to pay, with ten per cent. interest.

SELAH CHAMBERLAIN.

Selah Chamberlain being recalled, answers and says:

X-question. After the purchase by you of the Cleveland judgment, did William P. Lynde, and the firm of Finches, Lynde & Miller, be-

come, and have they since continued to be, your attorneys, solicitors, and counsel in regard to said judgment, and the enforcement of the same?

(Objected to for immateriality and irrelevancy; and further that under the order of reference in this cause, the masters are not empowered or authorized to inquire into the judgment of Cleveland against the La Crosse & Milwaukee Railroad Company for any purpose, or into anything connected therewith.)

(The defendant's counsel, Mr. Carpenter, offers, in connection with this question, to prove that after the said Chamberlain purchased the said Cleveland judgment, as stated by said Chamberlain in his former examination before the masters, that he immediately employed the firm of Finches, Lynde & Miller as his solicitors, and William P. Lynde, esq., of that firm, as his counsel in the suit in equity in the name of said Cleveland, complainant, and against the La Crosse & Milwaukee Railroad Company, and the said Chamberlain and others, defendants; which suit was commenced in this court to enforce collection of said judgment against said company, said Chamberlain, and others; that the said Chamberlain caused the appeal to be taken in said cause which is now pending in the Supreme Court of the United States, and that such appeal is now prosecuted and defended in said Supreme Court by and at the expense of the said Chamberlain, and at his expense alone, and that no party or person is represented or acting on either side of said appeal, except said Chamberlain, and that the stipulations which are filed in said cause, and dated subsequent to said purchase, are signed by attorneys on behalf of complainant and defendant, who are retained and employed only by said Chamberlain, and for this purpose Mr.
774 Carpenter asks the foregoing question. The objection being insisted upon by the counsel for the defendant, Selah Chamberlain, the same is sustained, and the foregoing question is overruled by the masters.)

(The foregoing question and offer having been submitted to the Hon. A. G. Miller, judge of this court, and he having decided that the evidence excluded as above should be received, the question is now renewed; the counsel for the defendant Chamberlain again objects to the said question for the reason that the same is immaterial and irrelevant, and such objection being overruled, the defendant Chamberlain answers as follows:)

Answer. I was out of the State at the time that judgment was purchased; I returned to the State some two or three weeks afterwards. I have never had a word of conversation with Mr. Lynde or Messrs. Finches, Lynde & Miller about the appeal. I employed Finches, Lynde & Miller on general account, retaining them, and paying them a retaining fee, sometime before the commencement of the foreclosure suits. I have never employed them in the appeal in the Supreme Court.

Question. Is the law firm of Finches, Lynde & Miller, who appear of record as solicitors for the complainant in the case in the Supreme Court of the United States in the name of N. Cleveland against

the La Crosse & Milwaukee Railroad Company, yourself, and others, or is William P. Lynde, who appears of record as counsel in that appeal, acting on your employment and on your behalf therein?

Answer. I have been told by my counsel, Mr. Emmons, that Mr. Lynde would attend to it in Washington for the complainant.

Question. Do you or do you not expect to pay Mr. Lynde for his services as counsel in that appeal?

Answer. I do.

Question. Do you know of any other person or party than yourself, who is employing, or is to pay said Lynde for his services as
775 counsel in that appeal?

Answer. I do not.

Question. Did you not direct your attorney, Mr. Emmons, at or about the time this judgment was purchased, to have Finches, Lynde & Miller, or Mr. Lynde substituted as solicitors or counsel for the complainant in that cause?

Answer. I did not.

Question. Who employed Mr. Lynde to act as counsel in that cause, after the appeal was taken?

Answer. I suppose that Mr. James B. Cross did, he having purchased the judgment.

Question. Did Mr. Cross do this by your directions or authority?

Answer. He did not. I did not know anything of it.

Question. Did not Mr. Cross, in purchasing said judgment and retaining said counsel, act for you in fact, and have you not since ratified and approved what he did, and have you not assumed to pay for said judgment, and for such services of said counsel Lynde?

Answer. He did act for me, and I have ratified his act.

(The foregoing questions are taken each subject to the objection of Mr. Van Dyke, counsel for Mr. Chamberlain, on the ground of irrelevancy and immateriality.)

Since the judgment was purchased, Finches, Lynde & Miller, and Mr. Lynde are to be paid by me. The ballasting contract (Exhibit No. 8) is the first one in order of date, on which anything is due me from the railroad company. I can't recollect the date of the first monthly estimate under that contract. The estimates up to the first of May were paid in the company's notes. The notes were given to me, I think, in full of the amounts of the estimates. From the first of May on, some part was paid in money, and I think some notes were given; months were not closed up. I can tell by going to the books about the months subsequent to the 1st May. I think the estimate for May was settled by note and cash, but I am not
776 sure. I don't remember now how much was due on the first September, 1857. From May onward the monthly estimates were not settled, I think, but there was a running account. The books will show all about it. While this contract was going on, I had a contract with the company for the construction of the western division (Exhibit No. 9.) I worked from Portage City to near La Crosse under that contract; between the date of the contract and October, 1857, monthly estimates were made of the work we did un-

der that contract. The first estimates were paid less the percentage, which the company was entitled to retain. I received my payments sometimes from the treasurer of the company; sometimes from Mr. Goodrich, the vice president. It was paid mostly in drafts on New York, signed by Mr. Goodrich as secretary or vice president. When I got money, it was paid by the treasurer. I kept making demands for payment on the treasurer, on Mr. Goodrich, on the directors, when they were present, after they began to get slack. Mr. Goodrich was generally in the office. He knew that I was unpaid on my contracts; whether he knew to what extent I was unpaid, I don't know. The original contracts of which exhibits 8 and 9 are copies, were executed on the day they bear date. The estimates made monthly were, I suppose, intended to be made in conformity to these contracts, but I contended all the while that they underestimated the work I had done.

Question. Did you at any time have any other or different contract with the company or any officer or officers of the company for doing the work done under these contracts, or any part thereof?

Answer. I never did.

Question. Do you know upon what grounds the president and other officers of the railroad company represented in New York in August, 1857, that with the $400,000 proposed to be raised by the second mortgage they could pay up the contractor and finish the road to Tomah?

Ans. I do not.

Question. Had you advised the president or other officers of
777 the company that with $400,000 in addition to payments already made they could finish the road to Tomah?

Answer. I never did. The first that I knew of such representations was what I saw in the New York papers, and I was as much surprised as anybody.

Question. Do you say distinctly and unequivocally that there was no private agreement, arrangement, or understanding between you and any of the officers of the company that for the work done by you, for which estimates were made under either of the two contracts above spoken of, you were to be paid or were to receive, as your compensation, a less sum than that specified in the contracts for said work?

Answer. I do.

Question. In what respect did the final estimates of work done under the ballasting contract (Exhibit No. 8) differ from the sum total of the monthly estimates made, as you have above stated, for work done on said contract?

Answer. It increased the amounts, I don't recollect now how much, and the amount for filling in Fox Lake was increased in the final estimate. The final estimate for the work done on the western division increased the amount of the total monthly estimates on that division, I think, about $200,000, but am not sure. I think there was a monthly estimate for the work done in August.

Question. Were you not in fact paid and settled with by note or

otherwise in full for all the monthly estimates under these two contracts up to and including the estimates for July, 1857?

Answer. No, sir, I think not. The papers already here (Exhibit No. 10) show every dollar of money that I received and the date of the payment.

Question. What evidence is there before the masters of the fact that you surrendered to the company, from time to time, the notes which you had received in payment for work, as shown by
778 your account in Exhibit No. 10?

Answer. I don't know that I could say what evidence is before the masters. I don't know any but the books of the company and my own testimony. I have sworn to it.

Cross-examined by Mr. Van Dyke:

The increase in the amount of the final estimate over the total amount of the monthly estimates was occasioned by the work done by me after the last monthly estimate was made and by the fact of the previous under estimating of the work.

The account in Exhibit No. 10 shows the amount bona fide due to me from the company at the time it was made, excepting the corrections and additions heretofore testified to before the masters. There was a note with a warrant of attorney given to me for that balance on the day of that settlement. There was nothing included in that note but what was actually and really due to me at that time. The company was not able to pay me the amount due me for work done. I came to town from my office at Portage City very often after money. I could not get it, except in small payments. I was doing a very large amount of work, and the company was hurrying me up to get the road completed to Tomah. About the first of September I came here with a full determination to have my pay, or to have it in some way secured, or to stop work. I at that time wanted the company to give me a lien upon a large amount of iron which they had piled up here. I threatened them with legal proceedings on my claim. They had a meeting of the board of directors. About that time they were making chattel mortgages on this very iron to secure the land grant bondholders, I believe. After a long talk, they persuaded me to go back and go to work, to put on a bigger force than I had to complete the road to Tomah at the earliest possible day. They promised to pay in September at least $150,000 in money on the current estimate, and also the notes which I held as fast as they should become due. They said if I would go on it would enable them to make sale of some land grant bonds which they had then, so that they could pay me up. I at that time
779 wanted them to give me security on the road and place me in possession of it when I gave up the idea of security on the iron. I wanted the receipts of the road secured to me. They declined doing it, saying that anything of that kind would injure their credit in New York, so that it would be impossible for them to negotiate their securities. At that time they promised me that in case they should fail to make the payments as they agreed they would secure me.

I went back and went to work, and came here every few days after money. I got what is charged to me as paid in September, 1857. It went on until about the 23d September, when I was here. Mr. Kilbourn had returned from New York. I applied to him for money, reminded him of his promises. He at that time told me that they had been disappointed in selling their bonds in New York; that they had had trouble among the land grant bondholders, who refused to pay up; that they had succeeded in getting only a portion of their second mortgage bonds (on eastern division) subscribed for; that they were entirely unable to pay me. Then we commenced to negotiate for security on the earnings of the road by the lease or mortgage. On the night of the 26th September the lease and the contract accompanying it were executed. My only object in taking that lease or mortgage was to secure and get my pay. I worked for that and nothing else. I proposed pretty strongly to have them pay me. If there had been any other way to get my pay I would never have taken the lease, by which I had to work for my pay a second time. I did not enter into the lease with the intent to hinder or delay any other creditors of the company in any manner whatever. My only design was to get my pay. I did not know, I had no reason to suppose, that the company had any such intent in entering into it. I believed their purpose in executing it was to secure to me my debt. I had no reason to suppose anything else. I had no intimate knowledge of their financial condition at that time. I was not at that time aware of any established indebtedness against the road other than the mortgage debts and my own claim. I heard, not from the company but elsewhere, that some notes had been given for some depot property at Madison on the Watertown division, but I did not know whether they had been paid or not.

780 My whole claim was for work done and materials furnished in the construction of the road, and for rolling stock furnished to the road, the particulars of all which have been given in the former testimony.

TUESDAY, 18*th June*, 1861.

Selah Chamberlain, being further cross-examined, says:

The lease provided for completing the road to New Lisbon. At that time, 26th September, 1857, the grading and masonry from Portage City to New Lisbon were nearly completed, entirely completed as far as Kilbourn City, and partly done from there to New Lisbon. The ballasting was nearly done to Kilbourn City, and a portion of it west from there. I have no other way to estimate the amount of work necessary to complete the road to New Lisbon than the engineer's estimate made at that time, which was some $56,000, as appears by the evidence already in. I presume that amount was about correct. That was the only work not then done, which by the agreement was to be paid for out of the after earnings of the road. Some days after the lease was executed the note and warrant of attorney before spoken of was given. The sum embraced on that note did not embrace anything but what was actually due to me at the date of that note, and then earned. I had judgment entered on that

note in the district court of the United States for this district, which is the same judgment of which evidence has been given in this cause. That note was given to me to secure the payment of the balance then found due to me from the company. In receiving that note and warrant of attorney I had no design, and I knew of no intent on the part of the company to hinder, delay, or defraud any creditor of the company. My only object was to secure myself. There was nothing said or done, to my knowledge, at the time of that settlement between me and the company from which I could infer that there was any intent to hinder or delay creditors of the company. The talk was to secure me, nothing else. I pressed the company for other security than the road itself. I did not succeed in getting any other.

781 Question. Was the road, in its then condition, with the large prior encumbrances thereon, completed only to an interior point, nearly completed only to New Lisbon, full security for the money then due you, in the said note mentioned?

Answer. It was not. The railroad company insisted that I should complete the road to New Lisbon, and get my pay from the earnings of the road that should come into my possession. I did not want to do any more work on the road; I wanted to stop. They insisted that I should complete the road to New Lisbon, or they would not give me the earnings of the road. They thought that the road completed to that point would command business they could not otherwise get. At the time of the execution and delivery of the lease to me, my accounts had not been adjusted or settled. At that time the engineer of the company was instructed to go out on the line and make up the estimates. Upon the execution of the lease, I demanded an immediate settlement of my accounts. In talking about the basis of a settlement, it was agreed that the engineer should go out and make the final estimate, which was done. He went out, made the estimate, and returned it, I believe, on the morning of the first day of October. The board was in session that morning, and all day and that night until twelve o'clock, before it was arranged. My whole accounts were gone over very carefully, and I think Mr. Palmer, thinking they were not right, went over them a second time with the book-keeper. He said he supposed I had been paid a great deal more money than I admitted. He found on the re-examination that the accounts were correct, I believe, as previously rendered. I claimed then and always since that the amount allowed me was not so much as I ought to have had, on account of some items of the work done by me being under estimated by the engineer.

I inquired at that time of the officers of the railroad company whether they owed Mr. Cleveland anything or not; whether he was likely to get a judgment against them. I had heard at the

782 Walker House of a suit pending against them in his favor. They assured me that they had overpaid Mr. Cleveland, and that there was no doubt but they would get a judgment against him of $18,000 to $25,000. I spoke of this first inquiring of them. No other claim was spoken of that I recollect. There might have been

something said about Vose, Livingston & Co. reclaiming the iron which they had sold the company, having got their pay in full in land grant bonds, and which iron then lay piled up on the company's dock here. I had heard something about the intention to reclaim the iron, and I spoke to the officers of the company about it at that time. I was told by the directors or their counsel, I don't remember which, that that the iron had been paid for, and that Vose, Livingston & Co. could not disturb it. They told me that the iron was purchased to be laid upon the road, and the contract so provided, and that it could not be reclaimed if not diverted from that object. I had been pressing for security on the iron, and I asked them about this, and they told me this as a reason why they could not give me security on the iron, that it must be laid on the road. At that time they had given a chattel mortgage on the iron to the land grant bondholders for further security, I believe. The first time I spoke to them about security on the iron they were about giving the mortgage.

I first knew in the fall of 1860 that Mr. Lynde had been spoken to about his services on the appeal in the Cleveland suit. Mr. Lynde was not retained with my knowledge, nor at my instance. I did not then, nor at any time prior to the month of April, 1861, have the legal title to the Cleveland judgment. James B. Cross had it. James B. Cross's notes, indorsed by Clark Shepardson, were given to Cleveland for the judgment, as I understand. I was not to have any interest in or control over the judgment until I should pay Mr. Cross the amount of the purchase-money. He was to hold it as security until I should pay for it, and he was to have the entire control of it. The judgment is assigned to a trustee now as security to Mr. Cleveland for the judgment of the balance due to him on it.

783 Question. Did not Mr. Cross and Mr. Shepardson remain liable to Mr. Cleveland for the purchase-money of that judgment until it was assigned by Cross, and placed in the hands of a trustee, with the assent of and as security for said Cleveland, and did not Cross have the sole control of said judgment until the time of such assignment, if you state what time it was so assigned for the benefit of said Cleveland?

Answer. Cross and Shephardson remained liable until that assignment, and up to that time Cross had the sole control of that judgment. That assignment was made about the last of April or first of May, 1861.

Question. Has William P. Lynde, or the firm of Finches, Lynde & Miller, at any time since they were retained by you as your counsel, taken any steps in that appeal suit?

Answer. Not to my knowledge.

WEDNESDAY, 19 *June*, 1861.

Selah Chamberlain, being re-examined, says:

We continued the work to Lisbon, finishing it to that point from Portage City. Work was suspended beyond New Lisbon. At the time of the suspension I had on hand horses, carts, tools, implements

to an amount sufficient for working the road. I should estimate the property on hand at the time of the suspension of the work to be worth $135,000. I could not tell in what amount I was then indebted to hands and sub-contractors. It was more than $100,000—a good deal more—but I could not say how much. I had then been working on the La Crosse railroad since April, 1856. I had before that had an interest in a contract on the Milwaukee and Mississippi railroad from a point near Eagle to Madison, which was settled to stop at Rock river, I think, but am not certain. I was here once during the progress of work under that contract, which was the first I had in this State; that was in 1852 or 1853.

784 Question. What amount of capital or moneyed means did you bring to Wisconsin and invest in railroad contracts, at the time you engaged in the contract on the Mississippi road?

(Objected to by counsel for defendant Selah Chamberlain, as irrelevant, and that the order of reference is not intended to embrace the Milwaukee and Mississippi railroad, or any other railroad or railroad contracts than those mentioned in the pleadings in the suit. The objection is overruled and the question is permitted to be asked.)

Answer. I could not answer that question.

Question. Did you bring $5,000?

Answer. Yes, more than five times that amount. I did not bring any money, but I caused to be brought a very large amount of money for that contract. I could not say how much. We bought and paid for 4,000 tons of iron on that contract.

Question. How much of your private means did you invest in that contract? I do not mean to include that which you borrowed.

(The counsel for Mr. Chamberlain renews the objection last made, and further objects to that the question is impertinent. The objection is sustained and the question is excluded.)

Question. Who was your partner on the first contract on the La Crosse road?

Answer. Stephen H. Alden. He had one-half interest in the construction contract from Beaver Dam to Portage City.

Question. What amount of your individual capital or moneyed means did you employ in that contract, not including property or money obtained on credit?

(Objected to by Mr. Chamberlain's counsel, because it is irrelevant, that no part of the claim is based on the contract inquired into, nor is that contract in evidence; and further that the question draws a distinction between the ready cash means of the witness and such means as were furnished by him on his own sole credit to carry on the contract. The objection is sustained.)

785 Question. What was the amount of your individual share of net profits arising out of that contract?

(Objected to by Mr. Chamberlain's counsel for irrelevancy, and because impertinent to this issue. Objection sustained and question excluded.)

Question. At about what time was the work under that contract completed?

(Objected to for the same reason by Mr. Chamberlain's counsel. Objection overruled.)

Answer. In the fall and during the winter of 1856. The grading was all done in the fall, and the track was finished in the following winter.

Question. What amount of your individual capital or moneyed means did you employ in the contract, called the ballasting contract, Exhibit No. 8.

(Objected to by Mr. Chamberlain's counsel for irrelevancy in this, that the question draws a distinction between the individual cash means of the witness and the means procured and furnished solely by him in carrying on the work. Objection overruled.)

Answer. I could not answer that question. That contract and the contract on the western division of the 20th January. 1857, were going on at the same time, and we left but one set of books, and I cannot distinguish what amount of means went into each.

Question. What amount of your individual capital or cash means did you employ in both the contracts, to wit, the contracts designated as Exhibit Nos. 8 and 9?

(Mr. Chamberlain's counsel does not object to the subject-matter of the inquiry, but claims that the master should instruct the witness that he is at liberty to answer as to all means furnished by him and employed on the work, which work when done by the means so furnished by him would constitute a claim against the company.)

786 Answer. I can't answer that question with any definiteness. At the time that I commenced the work from Portage City west, I think that my cash capital invested was from $125,000 to $150,000 during the spring and summer of 1857. I put in large amounts at various times.

(The witness is going on further to state in answer to the last question that he was obliged, after the settlement with the company in September, 1857, to raise amount of money in order to pay indebtedness against him for work previously done under those contracts, when he is interrupted by the counsel examining him, who objects that such answer is not responsive to the question, which was intended to embrace only the amount put into the work before the settlement.)

Question. What amount of your individual capital or moneyed means did you employ or invest in executing the ballasting contract, (Exhibit No. 8,) and the construction contract. (Exhibit No. 9,) prior to the settlement of 1st October, 1857, not including money or property obtained on credit?

(Mr. Chamberlain's counsel objects to the question because the counsel examining has no right to draw a distinction between the cash means of the witness employed in carrying on the work, and means furnished by the witness from any other source upon his own credit; nor a distinction as to the indebtedness by him personally incurred for work done. The validity of the defendant Chamberlain's claim must depend upon whether he did the work which the company had the benefit of and with which the company was chargeable, completed and performed his means or on his credit, and not the

company's. He further objects that it appears in proof that the work was done under a contract, which would govern as to the price or compensation for the work, and while the contract stands free from any suspicion of fraud, the only question is whether the work was performed and how much.)

787 JUNE 26, 1861.

(The question last above propounded is withdrawn by the counsel.)

Re-examination of Selah Chamberlain by the counsel of Sebra Howard and others, continued:

Question. Was there not a lease of the entire Watertown division, so called, made by the La Crosse Railroad Company at the same time that the before mentioned lease to you was made?

Answer. Not to my knowledge. I have seen the lease, and I think it was made after mine was made. I know that the lease to D. C. Freeman was made after the lease to me was made. I have seen the record and I was here at the time it was made.

The Cleveland judgment is now assigned to Alexander Mitchell as trustee, to hold for my benefit, subject to the payment of the amount due Mr. Cleveland.

Cross-examination of Selah Chamberlain by the counsel for the defendant, Chamberlain:

Question. What amount were you liable for on account of the work performed by you prior to October 1, 1857, and up to that time, on the contracts stated?

Answer. I can't give the exact amount. I should estimate it to be somewhere between $125,000 to $150,000 that I was in debt at that time for such work.

Question. Was provision made by the company for any part of this?

Answer. Not at all, otherwise than by the judgment and lease.

Question. When you made these contracts, (Exhibits Nos. 8 and 9,) what was about your personal pecuniary responsibility, and what were your means and opportunities of credit in carrying on works of the character mentioned in the contracts?

Answer. I suppose that my real estate, railroad stocks and bonds, and other securities, would be worth, at the prices then put on such property, from $600,000 to $700,000. I had no trouble in getting all the money I wanted at that time for carrying on works of
788 the kind on my own notes, without indorsement when it was necessary. I put up collaterals. I was then entirely out of debt.

Question. In carrying on these contracts did the railroad company or its directors, or any person connected therewith, advance you any money, property, or other thing by you earned by the terms of the contracts themselves, at the time of such payment?

Answer. No sir, they did not.

Question. Did they meet their engagements with you under the contracts?

Answer. They did not. The extent of their failure appears in detail on the proofs already taken in this cause. The claim against me in favor of Edwin McCall, testified to by me heretofore, has been ordered, by this court, to be paid by the receiver, the amount being settled, and I have therefore no claim on account of that suit.

Question. When the contract of 8 December, 1857, for a new estimate of the work done by you prior to 1 October, 1857, was made, did the board of directors of the La Crosse Railroad Company consist of the same persons as when the settlement was made with you on 1st October, 1857, and who on the 8th of December was president of the company, and what reasons led to such remeasurement and re-estimate?

Answer. There had been a change in the board of directors between the two dates; a majority at the last date being new men from east. Stephen Clark was president of the new board. The reasons which led to the remeasurement are the same set forth in the contract for the remeasurement. That original contract I now hold in my hands. (A copy whereof is on file in this cause, marked Exhibit C, and the estimate made in pursuance of said contract, marked D, is also on file in this cause.) The only object in making the remeasurement was to ascertain the actual amount of work done, and the
789 amount due to me. I wanted what was due to me, and nothing more.

S. CHAMBERLAIN.

For Exhibit No. 1, referred to in foregoing testimony see page —, No. —.

Exhibit No. 4 see page —.

Exhibit No. 8 see page —.

Exhibit No. 9 see page —.

Exhibit No. 10, referred to in foregoing testimony, is as follows, to wit:

790 *Exhibit No.* 10.—*Schedule G.*

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, DR.

1857.				
April	2.	To invoice rendered, see Paper No. 1		$19,538 35
	4.	To do do do 3		320 32
	6.	To do do do 3		2,178 18
June	10.	To do do do 4		3,223 97
Sept.	11.	To do do do 5		2,061 00
	22.	To uncurrent money returned		2,061 00
Oct.	1.	To note No. 272, returned	$10,000 00	
		Interest	530 55	
				10,530 55
	1.	To note No. 280, returned	1,000 00	
		Interest	35 00	
				1,035 00

1857.				
Oct.	1. To note No. 282, returned ..	$3,934 40		
	Interest.....	137 70		
				$4,072 10
	1. To note No. 288, returned ..	13,707 73		
	Interest.....	399 81		
				14,107 54
	1. To note No. 302, returned ..	12,719 60		
	Interest.....	423 98		
				13,143 58
	1. To note No. 343, returned ..	10,000 00		
	Interest.....	250 00		
				10,250 00
	1. To note No. 344, returned ..	8,228 00		
	Interest.....	205 70		
				8,433 70
	1. To note No. 279, returned.....			9,769 18
	1. To estimate for ballasting, 1,92,542 c. yds., at 40 c.....			77,016 80
	1. To filling in bank, Beaver Dam bond.....			20,768 65
				198,259 29

1857.	Credit.		
April	2. By note No. 278.....	$9,769 17	
	2. By do. 279.....	9,769 18	
	4. By do. 280.....	1,000 00	
	4. By do. 281.....	1,000 00	
	4. By do. 282.....	3,934 00	
	4. By warrant on treasurer....	320 32	
	10. By cash, 215 57, 740 60, 136 11	1,092 28	
May	5. By note No. 288.....	13,707 73	
	5. By cash....	726 57	
	30. By do.....	1,285 06	
791	June 3. By note No. 302.....	12.719 60	
	3. By draft on Atwood & Co....	1,938 91	
	30. By cash.....	1,571 20	
July	10. By note No. 343	10,000 00	
	10. By do. 344	8,228 00	
	31. By cash, 545 72 and 7 00....	552 72	
Aug.	31. By cash.....	795 03	
Sept.	8. By cash....	200 00	
	10. By cash.....	13 75	
	24. By warrant on treasurer.....	4,500 00	
Oct.	1. By balance, Chamberlain and Alden.....	4,768 65	
			87,892 57
			110,396 72

La Crosse and Mliwaukee Railroad Company
To S. Chamberlain, Dr.

For constructing 43 miles main line between Portage City and New Lisbon	$516,000 00
For constructing 2¼ miles side track	27,000 00
For constructing, grading, and masonry for 9½ miles	96,000 00
For extra on earth hauled over 500 feet	41,000 00
For grubbing and clearing 80 miles, 300 00	23,000 00
For solid rock excavation, 118,250 yds., 1 00	118,250 00
For ....do.... 2,400 yds., 75	1,800 00
For roadway and cattle passes	11,700 00
For excavations of foundations and timber for same	6,500 00
For bank wall, 3,500 yards, at 3 00	10,500 00
For tunnel approach excavation, 64,000 yards, at 2 00	128,000 00
For pile bridging	2,500 00
For tunnel culvert at Kilbourn City	2,300 00
For ballasting 45¼ miles, at 2,000 00 per mile	90,500 00
	1,076,450 00

1857.		Cr.
Mar.	9. By draft on Atwood & Co	$18,000 00
	9. ....do....do	19,530 00
	19. ....do....do	15,000 00
	19. ....do....do	5,000 00
	April 2. By currency	6,184 00
792	4. By draft on Atwood & Co	25,000 00
	4. ....do....do	18,856 00
	4. ....do....do	10,000 00
May	5. ....do....do	40,000 00
	5. ....do....do	30,605 00
	29. ....do....do	10,000 00
June	2. ....do....do	10,000 00
	2. ....do....do	10,000 00
	2. ....do....do	8,000 00
	2. ....do....do	20,000 00
	2. ....do....do	67,470 00
July	7. By warrant on treasurer	6,000 00
	7. By currency	14,000 00
	11. By draft on Atwood & Co	15,000 00
	13. By currency	5,000 00
	15. ....do....	5,000 00
	18. ....do....	6,933 00
	24. By draft on Atwood & Co	5,000 00
	24. By warrant on treasurer	5,000 00
	24. ....do....do	5 000 00
Aug.	1. By currency	8,000 00
	7. By draft on Attwood & Co	5,000 00
	7. By currency	10,000 00
	8. ....do....	10,000 00

1857.				
Aug.	13.	By currency	$15,000 00	
	22.	By my note given up	10,000 00	
	22.	By currency	7,500 00	
Sept.	3.	By draft on Bank Republic	10,000 00	
	4.	By draft on Bank Republic, 5,000, 5,000	10,000 00	
	15.	By draft on Bank Republic	5,000 00	
	16.	By note $456	149 00	
Oct.	1.	By my three notes, $10,000 each, given up	30,000 00	
	1.	By amount deducted from estimate as being sum required to complete road to New Lisbon	56,500 00	
				$557,727 00
				518,723 00
				110,366 72
				629,089 72

793 *Paper No.* 1.

La Crosse and Milwaukee Railroad Company

To Selah Chamberlain, DR.

1856.			
Dec.	15.	For my two notes of this date, payable in 3 mos. and 6 mos., $5,500 each, for 20 8-wheel gravel cars, *a* 550	$11,000 00
1857.			
Jan.	8.	For my 3 notes to Wasson & Co. for 10 gravel cars	6,497 40
	8.	For interest on $5,500 00 to Aug. 1, 4½ mos	219 38
	8.	do do do 1½ mos	74 25
	8.	do 6,497 40 do 2⅔ mos	149 80
	8.	For freight on 20 cars from Hudson to Cleveland	46 80
	8.	For freight on 20 cars from Cleveland to Toledo	201 60
	8.	For freight on 20 cars from Toledo to Chicago	320 00
	8.	For this amount for oiling do	22 88
	8.	For J. A. Taylor for haulingcars, $50 and $30	80 00
	8.	For freight from Chicago to Milwaukee	200 00
	8.	For Galena and Chicago Union R. R. Co	40 00
	8.	For freight 10 cars from Cleveland to Chicago	296 80
	8.	For freight 10 cars from Chicago to Milwaukee	100 00
	8.	For Galena and Chicago Union R. R. Co	50 00

1857.

Jan.	8.	For paid John Miller for hauling 30 cars	$123 00
	8.	For E. Garfield, expenses for cars	66 44
	8.	For Q .... do .... 20 days' time	50 00
			19,538 35

Paper No. 2.

La Crosse and Milwaukee Railroad Company

To Selah Chamberlain, Dr.

1856.

Dec.	To cost of opening gravel pit and grading for side track to same	
	To 2 days R. Merrill, 2 00; 10½ by T. Shields, 9½	$47 81
	To 12 days A. Meheme, 1 00; 11¾ by M. Mc Carty, 8½	23 75
	To 9½ days Con. Murphy, 1 00; 3½ by Pat. Griffin, 8½	13 00
	To 2 days M. Grunewal 5½; by M. Holland, 8	8 50
	To 8 days M. Murphy, 1 00; 8¾ by Jas. Owens, 8½	16 75
	To 10 days J. O. Muley, 1 00; 9¾ by Pat. Sullivan, 8½	19 75
	To 8 days John Moran, 1 00; 2½ Martin Devine, 8½	10 50
794	To 2½ days Morris Griffin, 1 00; 8¾ by Bart Yaughlan, 8½	11 25
	To 5 days Wm. McGill, 1 00; 7 by Pat. Hughes, 1 00	12 00
	To 5¾ days Pat. Corney, 5 by Dennis Rugan	10 75
	To 7 days Fredk. Cartee; 6¾ by Arthur Regan, 1 00	13 75
	To 3½ days Jas. Gordon; 2 by Stephen Caton, 1 00	5 50
	To 4 days Michl. Kennelly; 2 by E. S. Pendergrast	6 00
	To 2 days Michl. Kavanaugh; 1 by Frank Finnelly	3 00
	To 1 day George Barton; 1 by Jerry Maloney .. .	2 00
	To 1 day Danl. Maloney; 1 by Chas. Stearns	2 00
	To 1 day Thos. Kennedy; 1 by Edw. McCarty ...	2 00
	To 1 day M. Sullivan; 5 by Jacob Straw, 3 00 ...	16 00
	To 5 days Oscar Straw, 2 00; 5 P. Hubert, 1 50 ..	17 50
	To 4 days A. B. Bently, 1 25; 5 by Anthy. Smith	10 50
	To Dale and team, 1½ days, 3 00	4 50
	To for use of tools	64 06
		320 32

Paper No. 3.

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, DR.

1857.

March. For cost of blocking up track, putting gravel on under same, and other necessary work to put track in running order between Midland and Portage city:

For James Ramons and party	$66 10
For Geo. Farrington and party	245 91
For Jacob Straw and party	371 86
For Michl. Morris and party	108 94
For R. Copeland and party	732 62
For Wm. G. Rogers and party	652 75
	2,178 18

Paper No. 4, including the eight bills on invoices recapitulated below.

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, DR.

1857.

June 1. For recapitulation, viz:

For No. 1. Putting on chairs, re-spiking track, &c	$207 27
For No. 2. Putting on switch, &c., prairie near Fox lake	107 00
795 For No. 3. As above, Whitman island	159 12
July 1. For No. 4. As above, between Portage City and Midland	90 00
For No. 5. As above, Portage City	260 87
For No. 6. Ties, chairs, and spikes	2,075 90
For No. 7. Repairing gravel cars, &c	110 81
For No. 8. Putting in switch and track, gravel pit, Portage City	213 00
	3,223 97

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, DR.

1857.

April. For the following labor, &c.: Re-spiking and bringing back into gauge, and putting in small chairs and taking out large ditto, between Portage and Pardeeville:

Aaron Waterman, 10 days; common labor, 82 days	$48 00
May. Aaron Waterman, 2 days; common labor, 6 days	11 30
8 kegs spikes, used as above, 800	49 00

1857.

May.	James Tray and four men, as above, 30¼ days	$40 84
	178 kegs spikes	10 68
	James Tray and three men, 1¼ days on canal bridge, to let steamboat through, per order Leathe, engineer	7 00
		165 82
	Add 25 per cent. for tools and superintendence	41 45
		207 27

La Crosse and Milwaukee Railroad Company

To S. Chamberlain, Dr.

1857.

April.	To expenses putting in frog and switch, and side track, Fox lake, viz:	
	To Charles Alber, 2 days	$6 00
	To Cunningham and Bracey, 4 days each	16 00
	To 24 days common labor	26 40
	20. To 6 men 1 day, extending do.	7 20
May	15. To Cunningham and Bracey, $4, and 6 men 1 day, moving frog and switch, $7 20	11 20
	15. To 7½ days, taking up frog and switch, near Beaver Dam	10 00
	16. To Cunningham and Bracey, $4 00; 4 men 1 day	
796	taking up track, $4 80 do	8 80
		85 60
	Add 25 per cent. for tools, &c	21 40
		107 00

La Crosse and Milwaukee Railroad Company

To Selah Chamberlain, Dr.

For the following expenses, putting in frog and switch, and side track, on Whitman's island:

1857.

March	11. To Rogers and 4 men, ½ day	$5 20
	30. To Rogers and 4 men, 1 day	10 40
	31. To Rogers and 4 men, 1 day	10 40
April	4. To Rogers and 3 men, 1 day	9 30
	4. To Cunningham and Bracey, 3 days each	8 00
	4. To Dodge and 6 men, 3 days each	15 60
	4. To Cunningham and Bracey, 4 days in M'ch. (The above for gravel pit, north side of main track.)	16 00
May 1 to 9.	To Cunningham & Bracey and 2 men, 5 days, frog and switch, south side of main track	32 00

1857.

May 1 to 9.	To Bracey, $6 00, and 4 men, 3 days, extending track, 14 40	$20 40
		127 30
	Add 25 per cent. for use of tools and superintendence	31 82
		159 12

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

1857.

	For expenses putting in frog and switch, between Pardeville and Portage City:	
April.	For C. Alder, 4 days	$12 00
	For Cunningham & Bracey, 4 days each	16 00
	For common labor, 16 days	17 60
May 2.	For Cunningham & Bracey, $4, and 4 men, 1 day, $4 80	8 80
May 4 & 5.	For Cunningham & Bracey and 4 men, 2 days	17 60
		72 00
797	Add 25 per cent. for tools and superintendence	18 00
		90 00

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

1857.

	For the following expenses: Taking up side track at Portage City, gravel pit, and putting in frog and switch, and laying side track south of depot:	
May 18–24.	For Cunningham & Bracey, $20, and 18 men, 6 days, $129 60, taking up track and straightening iron	$153 60
	For Cunningham & Bracey, $20, and 5 men 5 days each, putting in switch and laying side track south of depot (was hindered by trains standing on track)	50 00
May 21.	For 4 men, ½ day, repairing engine-house track, Portage City	2 40
22.	For 2 men, ½ day, putting in cattle-guards, order of Leathe, engineer	1 20
23.	For 3 men, ¼ day, repairing engine-house track	90

1857.

May 28. For 2 men, ¼ day, repairing turntable..... $60

208 70

Add 25 per cent. on tools and superintendence.. 52 17

260 87

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

For the following chairs and spikes and ties in gravel pit, on La Crosse and Milwaukee railroad:

Ties.	Chairs.	Spikes.		
86	22	388	Parduville switch from main track to turntable.	
56	20	264	Pardeville turntable into engine house.	
	6	160	Pardeville turntable.	
16			Pardeville support going off turntable.	
33	32	300	Portage City engine-house.	
32	8	144	Portage City side track off turntable.	
236	73	709	Portage City temporary side track, south depot, Portage City.	
620	170	2,990	Portage City gravel pits.	
580	150	2,910	Gravel pit between Portage City and Midland.	
561	156	2,968	Gravel on Whitman's island, north side.	
154	47	729	Gravel on Whitman's island, south side.	
140	40	1,100	Fox lake gravel pit in prairie.	
225	138	2,754	Fox lake piling.	
256			Fox lake distributed for side track.	
70	14	300	Canal bridge, near Portage City.	
		300	1 keg taken by Hansley from Beaver Dam station.	
180	74	300	Side track near Beaver Dam.	
		16,116	Spikes, ½ lb. each, 8,058, at 5 c.	$402 90
	1,000		Chairs, at 3½ c. each	375 00
3,245			Ties, at 40 c. each	1,298 00
				2,075 90

798 La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

1857.

March 11. For Rogers and four men one-half day putting in side sticks for culvert, Lake Robert..... $3 90

19. For Rogers and twenty men one-half day work on track, passenger train off track and engine taken to haul train to Fox lake 12 50

25. For two men one-half day getting freight on track for Kelley 1 20

26. For five men one-half day repairing culvert between Midland and Portage City..... .... 3 00

1857.

March	30.	For one man three days wheeling sand into engine-house, Midland	$3 00
Febr'y	12.	For this amount paid for mending coupling link	38
	19.	For this amount paid for wood work on cars	1 00
March	11.	For coupling iron on engine repaired	1 00
	21.	For mending hook on engine	50
	26.	For mending draft iron	1 00
May.		For Yale's bill for 1,491 foot lumber, for side boards to cars	26 83
		For Smith and Blair, twelve rolling stands for gravel cars, 502 lbs., at 5 c.	25 10
		For drilling and putting screws in same	8 64
			88 65
		Add 25 per cent	22 16
			110 81

La Crosse and Milwaukee Railroad Company

To Selah Chamberlain, Dr.

1857.		For laying side track, putting on switches, &c., Portage City gravel pit:		
April.		For John Seymour, 9 days	$3 00	$27 00
		For James Mannehan, 4 days	1 00	4 00
		For Michael Calligan, 4 days	1 00	4 00
		For John Covey, 6 days	1 00	6 00
		For Patrick McCarty, 4 days	1 00	4 00
		For Patrick Sullivan, 2½ days	1 00	2 50
		For Cormick Cummings, 4 days	1 00	4 00
		For Martin Ryan, 3½ days	1 00	3 50
		For Nichol Doyle, 3 days	1 00	3 00
		For Albert Sargent, 2½ days	1 00	2 50
		For Alexander Ogden, 9 days	50	4 50
799		For Daniel Cunningham, 3½ days	2 00	7 00
April		For R. N. Copeland, 1 Sunday		3 00
		For George B. Tripp, 1 Sunday		3 00
		For S. H. Baily, 1 Sunday		3 00
		For James May, 1 Sunday		2 25
		For common labor, 24 Sundays		26 40
		For Jacob Straw, 3 days		7 50
		For common labor, 18 days		18 00
		For Leyman and Cunningham, 3 days each, and 22 days common labor		34 00
				170 40
		Add 25 per cent. use tools and superintendence		42 60
				213 00

Paper No. 5 includes the eight bills following the recapitulation below.

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

For recapitulation:

April.	For blacksmith account	$10 75
May.	For repairing bridges, &c.	135 25
April & May.	For blacksmith	79 13
June.	For blacksmith	265 44
July.	For blacksmith	279 36
	For labor, &c., canal bridge	107 67
	For labor, Portage prairie	373 69
	For bill detentions	559 08
		1,810 37

La Crosse and Milwaukee Railroad Company
To Selah Chamberlain, Dr.

1857.

April	30.	For repairing coupling bunter	$3 00
		For repairing coupling links	50
		For repairing shackle bar	1 50
		For 4 bolts for brake, 75 c.; repairing switch, 1 50	2 25
May	18.	For repairing coupling	3 00
			10 75

300 La Crosse and Milwaukee Railroad Co.
To Selah Chamberlain, Dr.

May	6.	For 17½ days moving switch, Fox lake gravel pit	$21 00
May	8.	For Bailey and 10 men, 1 day repairing canal bridge	15 00
May	18.	For Bailey and 8 men, 1 day repairing Fox river bridge	12 60
	16.	For Rogers and 17 men, ½ day, to Fox lake fund	11 70
	20.	For Farrington and 24 men, ¾, getting cars on track when frt. run off track at Fox lake piling	23 85
	22.	For putting in crossing at Chestreets	2 00
	24.	For Rogers and 22 men to Fox lake, after wood, ¾ day	22 05
		Add 25 per cent. for tools, &c	27 05
			135 25

La Crosse and Milwaukee Railroad Co.

To Selah Chamberlain, Dr.

April	20.	For repairing dump car, $3; hook on switch rope, $1 50	$4 50
	28.	For repairing brake, $1; repairing brake on flat car, 75c	1 75
	29.	For repairing bunter strap and colt	75
	29.	For 3 chock blocks, dump car	1 00
	29.	For repairing latch on dump car	75
	30.	For repairing bunter on dump car	1 75
	1.	For repairing 2 doors on dump car	2 50
	1.	For 4 switch-bolts for stand	1 00
	1.	For mending brake on flat car	50
	2.	For section 15, repairing bar	75
	4.	For repairing bunter bolts and plate on flat car	1 00
	6.	For 1 spring colt on frog	75
	6.	For frog bolts	60
	6.	For mending guard-rail	50
	7.	For section 15, sharpening chisels	25
	6.	For mending spring-hanger, engine No. 11	1 00
	6.	For mending coupling links	60
	6.	For mending chair, engine No. 11	13
	7.	For hanging door on dump car	50
	11.	For chock-blocks, 75c.; repairing bunter, $1	1 75
	11.	For repairing bar, section 15	75
	12.	For engine No. 11, straightening strap	25
	14.	For straightening and mending bunter	3 00
	14.	For 4 bolts, do., $2 50; mending coupling pin, 50c	3 00
	16.	For mending bunter, $1 25; welding coupling, 25c	1 50
	18.	For 4 new bolts, and repairing woodwork	3 00
801	18.	For 3 new brake-heads on cars and chains	1 00
	18.	For hooks and bolt	50
	19.	For sharpening chisels for sec. 15	25
	19.	For repairing bunter irons, $4 75; 1 bolt, and repairing brake, 50c	5 25
	20.	For 1 eye bolt on brake stand	25
	20.	For 19 lbs. coupling link, and mending	2 15
	21.	For 40 lbs. iron on car, strap, and plates	4 80
	21.	For repairing 4 bolts, $1; mending bunter, $1	2 00
	21.	For mending brake, 75c.; 228 bolts, $1	1 75
	22.	For shortening 4 new hooks, and bolts and brake	1 25
	22.	For taking off and bending 4 levers	1 00
	22.	For 4 new nuts, 25c.; 4 new bolts, 50c	75
	23.	For putting on brake, 50c.; welding 3 links, 75c	1 25
	23.	For 2 new pins, $1; 2 straps on stake iron, 75c	1 75
	25.	For 2 bolts in bunter, 50c.; long rod on brake, 50c	1 00

April 26.	For mending bunter and 1 pin, 50c.; cutting and mending brake, $1 25	$1 75
27.	For brake s. hook and bolt, 50c.; repairing bunter, $3	3 50
28.	For 1 bolt in bunter, 20c.; shortening brake, 25c.	45
28.	For shifting 2 brakes on cars	3 00
29.	For repairing bunter, $1; repairing hand car, 50c	1 50
29.	For taking off bunter and repairing 2 bolts	2 00
29.	For shifting brake	1 00
29.	For repairing spring hang on engine No. 11	1 00
29.	For repairing plate and bolt	2 65
30.	For shortening brake, new chain and eye	1 50
30.	For 2 bolts, staple, and plate for bunter	2 00
		79 13

La Crosse and Milwaukee Railroad Co.

To S. Chamberlain, Dr.

1857.		
June 1.	To 1 colt on brake, 20c.; shifting brake on flat, $1 50	$1 70
1.	To 4 coupling-pins, $1 50; 9 staples, 90c	2 40
1.	To 1 brake-bar and repairing do., $1; splicing draw-bar, $10	11 00
1.	To repairing door and 3 catches, $4; putting on roller-stand	6 00
1.	To repairing brake, $1; 4 new chock blocks, $2 75	3 75
1.	To repairing 2 chock blocks on beam, $1 50; repairing bolts and iron, $4	5 50
802		
1.	To 2 coupling-pins and links, $1 25; 2 rods and 2 bolts, 75c	2 00
8.	To 4 new log mill, 00; repairing brake rod on flat, 15c	15
9.	To new storup and bolt, 75c.; new brake with rods, &c., $4	4 75
9.	To repairing bolts, rocker, and iron work, $2; cross-beam on dump, $2	4 00
9.	To new centre stay, 50c.; 2 dump blocks, 50c	1 00
1.	To 2 hasps and staples dump cars, 50c.; repairing brake and stand, $1	1 50
1.	To 1 bolt on dump car, 25c.; repairing brakes on flat	45
1.	To repairing bumper, 25c.; brake stand and 2 bolts, $1	1 25
10.	To coupling piece and chain, 75c.; repairing brake on flat car, 25c	1 00
10.	To repairing brake, 25c.; repairing keying on wheel, 50c	75

1857.

June	10.	To 2 new chuch on draw-bearer; 2 do. on centre beam	$5 00
	22.	To 2 coupling pins and chains, $1 50; repairing doors and brake stands, $1	2 50
	22.	To hasp and staple for dump, 25c.; straightening draw 16, 50c	75
	12.	To 4 large nuts for engine No. 16, 50c.; repairing bunter, 50c	1 00
	12.	To repairing bunter dump, 50c.; coupling pin and broken stand, 50c	1 00
	13.	To 2 coupling pieces and chains, 75c.; repairing bunter flat, 75c	1 50
	13.	To repairing brake and stand flat car, 50c.; repairing brake, 25c	75
	13.	To bunter on flat car, $2 50; repairing stirup iron bolts, &c., $1 25	3 75
	13.	To jacking up car and packing, $2 50; 2 blocks on centre, $1 50	4 00
	15.	To 2 block draw bar, $1 50; 2 new boxes on boxes, 50c	2 00
	15.	To repairing bolt and nut, 15c.; 3 coupling pins	1 65
	17.	To repairing 2 bunters on flat car with 9 new bolts and stirrup	6 00
803	17.	To repairing two brakes on flat, $1; 3 new coupling pins, $1 50	2 50
	17.	To repairing two brakes, jacking up car, and replacing springs on dump	1 00
	17.	To 2 new latches on car door, 75c.; repairing dump door, $2 50	3 25
	19.	To 2 bolts and bunters flat car, $2 50; 3 coupling pins, $1 13	3 63
	19.	To new corner stay for dump, 50c.; latch on dump, 38c	88
	20.	To repairing truck frame with new bolts, $3; 2 coupling pins, 75c	3 75
	20.	To 2 dump blocks, $2; 3 coupling pins, $1 12	3 12
	20.	To 2 dump blocks, $2; repairing brake with new, $1 25	3 25
	20.	To repairing bunter on dump car, $2; brake on flat, 50c	2 50
	23.	To repairing bunter on flat car, $1; repairing rod and chain, $1 50	2 50
	23.	To 3 coupling pins, $1 12; 13 link coupling, $1.	2 12
	23.	To 3 new cast-iron caps and putting on	50
	23.	To 4 chock blocks for dump cars, $1; 29, repairing dump block	1 25
	23.	To 6 days by R. A. Brownson, repairing woodwork on cars	12 00
	30.	To repairing tracks and putting under cars, $6; bolts on dumps, 25c	6 25

1857.

June 30.	To putting on castings, $1; putting on rods, 75c.	$1 75
31.	To repairing door dump car, 75c.; repairing bunter, 50c	1 25
31.	To repairing bunter, 50c.; bolt on stirrup, 75c.	1 25
31.	To sharpening chisels for Robinson Liesman	1 00
20.	To this amount paid Smith & Blear, for roller-stands, 317 a 5c	15 86
20.	To this amount paid for 12 half boxes, 22c	1 10
20.	To this amount paid for drilling and putting set-screws on same	5 76
20.	To this amount paid for 9 pieces bump iron, $2 73.	13 65
20.	To this amount paid for 5 roller stands, $1 98; drilling and setting, $3 60	13 50
20.	To this amount paid for 3 roller stands, $1 59	5 95
20.	To this amount paid for drilling and setting on same	2 16
20.	To 4 days wheeling and grading turntable Portage City	5 00
20.	To 2 men as above	5 00
25 & 26.	To 16 days' labor grading, &c., depot grounds	20 00
804	To 4 men ½ day to Midland for wood	2 50
	To 12 wheelbarrows, per order W. Kithridge	36 00
	Add 25 per cent. on labor	8 12
		265 44

La Crosse and Milwaukee Railroad Co.

To Selah Chamberlain, Dr.

1857.

July 2.	To 1 new bunter and bolts, 5 00; 4 bolts for stump, 1 00	$6 00
2.	To 2 dump blocks, 75c.; 3d, repairing plate engine, No. 11, 12c	87
3.	To repairing bunter flat car, 2 00; repairing 3 brake chains, 75c	2 75
3.	To 2 dump blocks, 75c.; 4 chock blocks, 2 00	2 75
3.	To raising bed piece and bolts, 1 50; making key bunter, 10c	1 60
6.	To 2 dump blocks, and fastening brake, 1 25; mending brake, 60c	1 75
6.	To repairing draw bar, 1 00; 4 chock blocks, 2 00	3 00
6.	To gripe on casting for dumper, 75c.; new bench for dumper, 1 00	1 75
7.	To putting on track dump, 2 00; repairing doors and bolts, 75c	2 75
7.	To 10 bolts, 3 00; 4 bolts on bunter, 1 00	4 00
7.	To repairing bunter on flat, 1 00; 1 eye and bolt, 1 00	2 00
7.	To raising door on dumper, 1 25; 8th, 4 bolts on dumper, 1 50	2 75

1857.

July 8.	To raising bunter on flat, 2 00; repairing stirrup on flat, 2 00	$4 00
9.	To 2 latches, 1 75; 6 sets for flat car, 2 00	3 75
9.	To 1 stirrup and bolt for flat, 1 25; 1 new draw bar, 3 00	4 25
9.	To repairing 3 coupling pins, 75c.; repairing coupling link, 25c	1 00
9.	To 4 bolts for dump, 1 00; 4 chock blocks, dump, 1 00	2 00
10.	To 1 door post, and repairing door on dump car	2 50
10.	To putting on new castings and bolts	1 00
10.	To repairing brake chain and rod	50
10.	To 2 dump blocks, 75c.; 1 chock block for dump, 25c	1 00
10.	To 4 bolts for dump car, 1 00; 11th, repairing bunker dump, 2 20	3 20
11.	To repairing brake on dumper, 2 00; repairing truck frame, 50c	2 50
305 11.	To repairing door on dumper, 75c.; 15th, draw bar engine 3, 50c	1 25
13.	To 1 stirrup for dump car, 1 00; coupling pins, 25c	1 25
13.	To repairing door dump, 50c.; 2 door posts on dump car, 1 50	2 00
13.	To repairing brake on flat, 50c.; repairing brake on dump, 1 00	1 50
14.	To 1 catch dumper, 1 00; 1 dog for brake, 50c.	1 50
14.	To irons for Portage Prairie switch	2 50
14.	To 3 coupling pins for flat, 2 50; repairing brake chain, 37c	2 87
14.	To 2 bolts for dumper, 50c.; 15, repairing bunter flat, 3 00	3 50
15.	To 1 catch dumper, 25c.; 2 bolts for dumper, 1 00	1 25
16.	To 14 staples for flat, 1 75: 1 catch for dumper, 1 00	2 75
16.	To repairing doors on dump, 1 00; 17th, 1 stirrup for flat, 1 50	2 50
17.	To bolts in dumper for bunter, 50c,; 2 straps for bunter, 1 50	2 00
17.	To 6 bolts for flat, 1 50; repairing draw bar flat, 4 00	5 50
17.	To 4 bolts in bunter dump, 1 50; 20th, draw bar dump, 8 00	9 50
20.	To 4 bolts in bunter dump, 1 50; bunter flat car, 1 50	3 00
21.	To repairing draw bar, 4 00; 2 straps and 6 bolts, 3 00	7 00
21.	To stirrup for flat, 50c.; 22d, 8 bolts for dump car, 2 00	2 50

1857.

	22. To 2 plates for draw bar, 75c.; repairing draw bar dump car, 8 00	$8 75
	22. To repairing 3 doors, 1 00; 23d, stirrup and bolts and flat, 1 00	2 00
	23. To brake rod, and brake for hand-car section man	75
	23. To 2 straps and 4 bolts on draw bar dumper car,	1 50
	23. To repairing draw car dump car, 8 00; repairing brake, 25c	8 25
	24. To 2 straps for bunter car, 1 50; 6 bolts for bunter flats, 1 50	3 00
	27. To repairing bunter on flat, 4 00; 2 bolts door bumper, 50c	4 50
806	27. To repairing door dumper car, 75c.; 4 dead wood flat	2 00
	27. To repairing stirrup flat car, 25c.; repairing chain flat, 50c	75
	27. To 1 brake strap, $1 25; putting on 3 castings, $1	2 25
	25. To repairing brake flat, 50c.; 6 bolts for dumper, $1 50	2 00
	25. To repairing brake, engine No. 11, 50c.; repairing 2 brakes, $3	3 50
	25. To 4 chock blocks, $1; 10 bolts for do., $2 50	3 50
	25. To new draw bar, $8; repairing 3 doors dump, $1	9 00
	27. To brake lever and rod, $2; 2 latches for dumper, $1	3 00
	27. To 1 catch for dump, 50c.; 4 bolts 75c	1 25
	27. To repairing 2 truck frames, $2 50; repairing 1 do., flat, $1	3 50
	27. To repairing rocker, 2 dumps, $1; repairing brakes, 4 dumps, $4 50	5 50
	27. To 2 dump blocks, 75c.; 28th, 3 doors on dump, $1 50	2 25
	28. To 1 dump, and repairing fastenings, $1; repairing brake on dump, 10c	1 10
	28. To repairing floor on dump, $1; 11 bolts for dump, $1 50	2 50
	28. To repairing stirrup on flat, 37c.; 1 door catch dump, 50c	87
	28. To 1 catch, 50c.; 1 coupling pin, 50c.: 1 long coupling, $1 50; 4 bolts	3 25
	29. To 1 draw bar for dump, $8; repairing door, 50c	8 50
	29. To repairing brake on dumper, 75c.; 2 brake rods, flat, $1	1 75
	29. To repairing bunter on flats, $1 25; 7 bolts for dump, $1 50	2 75
	29. To repairing braces on dump, 50c.; 3 bolts for dump, 38c	88

1857.

July	30.	To repairing 3 coupling pins, $1 50; repairing brake flat	$2 00
	30.	To 10 bolts, dump, $1 88; 2 plates, dump, 63c	2 51
	30.	To repairing brake on flat, 50c.; repairing cans to spring, $1 50	2 00
	30.	To repairing 3 doors on flat, $1; 31st, draw bar on head block, $11	12 00
	31.	To putting catch on dumper, 10c.; 2 bolts for dumper, 63c	73
	31.	To catch for dumper, 50c.; coupling for "Shaughain," $2	2 50
807	31.	To brake chain for No. 11, 50c.; 4 bolts for dump, 75c	1 25
	31.	To ironing dump blocks	75
	31.	For amount paid J. D. Wheelock, for 1,440 ft. timber	28 80
	31.	For amount paid Smith and Blair, roller stands, 54c	4 78
	31.	For amount paid Smith and Blair, 24 roller stands, 283	14 15
	31.	For coning and drilling same	9 00
			279 36

La Crosse and Milwaukee Railroad Co.
To Selah Chamberlain, Dr.

For labor and materials on canal bridge—

C. L. Stewart, 1½ days, $3	$4 50
R. N. Copeland, 1½ days, $3	4 50
E. N. Beers, 1½ days, $2	3 00
Common labor, 12½ days, 10	15 62
21 ties, at 40c	8 00
24 chairs	9 00
300 spikes	15 00
4 ps. 12 x 12 timber, 64 feet, at 20c	12 80
20 plank, 147 feet, at $18 per M	25 46
Add 25 per cent. on $37 62 for tools, &c	9 40
	107 68

La Crosse and Milwaukee Railroad Co.
To Selah Chamberlain, Dr.

For labor and materials on side track, Portage City—

S. H. Bailey, 7 days	$21 00
Common labor, 79 days, 10	98 75
350 ties, 40c	140 00
82 chairs, 3	31 50

7 kegs spikes, 10 50 at 5	$52 50
Add 25 per cent. on $119 75, for tools and superintendence.	29 94
	373 69

La Crosse and Milwaukee Railroad Co.

To Selah Chamberlain, DR.

For the following detentions to gravel trains and men:

1857.		
Mar. 12.	For Rn. Copeland and 11 men, 1½ hours bailing water	$2 00
13.	For Rn. Copeland and 12 men, 2 hours bailing water	2 40
13.	For Rn. Copeland and 12 men, 1 hour bailing water	1 20
808 14.	For Rn. Copeland and 12 men, 1 hour bailing water	1 20
15.	To Rn. Copeland and 12 men 1 hr. bailing water.	1 20
16.	To Rn. Copeland and 12 men 1 hr. bailing water.	1 20
19.	To Rn. Copeland and 44 men detained ½ day, engine away to assist passenger train	23 50
19.	To Farrington and 4 men, 1 hour bailing water,	3 50
20.	To Copeland and 47 men, detained 1 hour; engine pumping up passenger engine	5 00
20.	To Farrington and 4 men, detained as above	1 00
21.	To Copeland and 47 men, detained 1 hour; engine switching Portage City yard	5 00
21.	To Farrington and 4 men, ditto as above	1 00
25.	To Rogers and 25 men, detained 4 hours by freight train	9 33
April 1.	To Ranors and 32 men, detained ½ hour by freight train	3 50
6.	To Ranors and 32 men, detained 1¾ hours by freight train	4 37
7.	To Ranors and 32 men, detained 2¼ hours by freight train	6 50
23.	To Rogers and 40 men, detained by freight train from 1.50 p. m. till 5.30 p. m.—2.50	10 75
23.	To Pearod and 31 men, detained by freight train 1¾ hours, as above	5 25
25.	To Cadwell & Farrington, with 30 men ¼ day, by engine broken down	9 00
27.	To Cadwell & Farrington, with 30 men ½ day, as above	18 00
28.	To Cadwell & Farrington, with 30 men ¼ day, helping passenger	9 00
27.	To Cadwell & Farrington, with 4 men, bailing water ½ day	2 00
27.	To Rogers and 40 men, detained by freight 4 hours	10 75

1857.

April	27.	To Pearod and 33 men, detained by freight 3 hours	$9 58
May	1.	To Copeland and 40 men, detained ½ day, engine broke	25 50
	2.	To Copeland and 40 men, detained 1 hour, engine freight off	3 90
	4.	To Copeland and 40 men, detained 1 hour, wood and freight train on track	3 90
809	9.	To Copeland and 36 men, idle ¼ day, engine went off	11 42
	18.	To Copeland and 36 men, idle ¼ day, engine went to Portage city	11 42
	22.	To Copeland and 36 men, idle ¼ day, engine went to P. city	11 42
	6.	To Caldwell and 24 men, idle ¾ day, engine broken	23 10
	6.	To Farrington and 4 men, idle ¾ day, engine broken	5 10
	12.	To Caldwell and 24 men, idle ¾ day, engine broken	23 10
	12.	To Farrington and 4 men, idle ¾ day, engine broken	5 10
	13.	To Caldwell and 25 men, idle 1 day, engine broken	30 80
	13.	To Farrington and 4 men, idle 1 day, engine broken	6 80
	29.	To Caldwell and 24 men, idle ¾ day, engine broken	23 10
	29.	To Farrington and 4 men, idle ¾ day, engine broken	5 10
	20.	To Dodge and 26 men, detained ⅓ day, engine off.	17 85
	22.	To Dodge and 27 men, detained ½ day, engine away for repairs	18 45
	22.	To Daniels and 31 men, detained by freight 1¾ hours	4 25
	22.	To Tripp and 4 men, detained 1 hour, freight 1½ hours behind	80
June	2.	To Copeland and 36 men, detained 1½ hours, engine broken	5 82
	11.	To Copeland and 33 men, detained ¾ day, engine broken	32 81
	13.	To Copeland and 22 men, detained ¼ day, engine broken	7 50
	8.	To Copeland and 36 men, detained 2½ days, by passenger train	9 15
	2.	To Stewart and 3 men, 1½ hours, engine broken.	67
810	11.	To Stewart and 3 men, 3¼ days, engine broken.	4 50
	13.	To Stewart and 3 men, ¼ day, engine broken	1 50
	4.	To Caldwell and 35 men, detained by freight ¼ day	11 56

1857.

June 7.	To Caldwell and 35 men, detained ½ day, engine broken	23 12
8.	To Caldwell and 34 men, detained ½ day, engine broken	22 50
4.	To Farrington and 4 men, detained ¼ day by freight train	1 87
7.	To Farrington and 4 men, detained ½ day, engine broken	3 75
8.	To Farrington and 4 men, detained ½ day, engine broken	3 75
6.	To Tripp and 4 men, detained 1½ hours by freight.	1 00
24.	To Tripp and 4 men, detained 1¼ hours by freight.	1 00
27.	To Tripp and 4 men, detained 1$\frac{25}{60}$ hours by freight	1 00
29.	To Tripp and 4 men, detained 1¼ hours by freight.	1 00
30.	To Tripp and 4 men, detained 1½ hours by freight.	1 00
8.	To Daniels and 27 men, detained ¼ day by passenger train	9 06
4.	To Bailey and 26 men, detained 2 hours by freight.	5 83
4.	To Bailey and 30 men, detained, No. 14 bursting steam pipe	1 00
8.	To Bailey and 24 men, detained by freight train, 1 hour	2 70
		559 08

811 Henry L. Palmer being produced as a witness on the part of the defendant, Selah Chamberlain, and duly sworn, says:

I was a director of the La Crosse and Milwaukee Railroad Company, and attorney for the company, in September, 1857, and became vice president of the company on the first October, 1857. I was aware that Mr. Chamberlain had a contract with that company for the western division of the road, and another for ballasting on the eastern division. I know that he did work on the road in 1857 under those two contracts. I know that the company had a settlement with him at the time that a judgment was confessed to him in the latter part of September and first of October, 1857.

Question. What do you know about that settlement, the manner in which it was arrived at, and how the balance due Mr. Chamberlain was ascertained? and generally state what you know of the merits of his claim as then ascertained.

Answer. In the first place, Mr. Chamberlain had been doing a very large amount of work, and arrearages from month to month had been accumulating on account of work performed under his contract for the construction of the western division and his contract for ballasting on the eastern division. When we got down to the month of September there was a large amount found due to him on his estimates, which had accumulated during several months preceding. He was pressing for payment. In order to secure the amount which the company was owing him, and also to provide for the completion of the road to New

Lisbon, the lease of the 26th September, 1857, was executed. The road was then nearly completed to New Lisbon. About the time that he took possession of the road under that lease, I think on the first day of October, it may have been on the morning of the second of October, he informed several of the directors of the company, and myself especially, as the vice president, that he did not consider his lease a sufficient security for his debt, and he urged that the company should give him a judgment for the amount due to him. It was proposed to consider the subject of giving him a judgment at the meeting of the board to be held the evening following. In order to prepare for a proper consideration of the subject, after a good deal of conversation, I that morning went to the chief engineer, Mr. Woodward, and directed him to prepare, as soon as he could, a final estimate of all the work done by Mr. Chamberlain on the road. I am not
812 certain that it was on the first of October that I called on him; it may have been as early as the 26th of September. Our object in getting this estimate was to ascertain the exact amount due to Mr. Chamberlain. I especially directed the chief engineer to be careful to have his estimate correct. Such an estimate as I directed to make—a final estimate—was made and returned to the office, and then a statement was prepared from the books, I think by Mr. Peabody, the book-keeper, under the direction of Mr. Goodrich, purporting to exhibit the amount due from the company to Mr. Chamberlain at that time. These accounts or statements were presented to the board, held in the evening, I think, of the first of October. A resolution was passed at the same meeting authorizing the president to execute a judgment note to Mr. Chamberlain for the amounts found to be due to him. As the accounts were first presented to the board that evening they embraced an estimate including some work not then completed; I think to the amount of something over $50,000. I objected to embracing that in the debt for which it was proposed to give him judgment; I urged upon the board that the company would be bound by their action as to the amount of the judgment, and that careful investigation should be had to ascertain the exact amount due to Mr. Chamberlain. The account was then corrected by striking out from it all that was embraced in it for unfinished work, to be thereafter performed, and a balance was found in favor of Mr. Chamberlain against the company for amount for which judgment was afterwards confessed—some $629,000. This balance was ascertained by taking the estimates of the gross amount of work performed and deducting from that amount the amount of the payments made to Mr. Chamberlain on account of the work, as exhibited by the books of the company. The accounts or statements on which the board acted were, during that evening, compared with the accounts between Mr. Chamberlain and the company, on its books. This comparison was mainly made by Mr. Goodrich, in connection with one of the book-keepers, Mr. Chamberlain being present part or all of the time, and some of the other directors taking part in it more or less. I, myself, went through with the statement of the payments to Mr. Chamberlain, comparing it with the account on the ledger of the company.

This meeting at which this transpired commenced early in the
813 evening, and was concluded, I think, about two o'clock that night, lasting several hours, most of which time was occupied in the manner I have mentioned, in endeavoring to arrive at the true amount due to Mr. Chamberlain. I had no personal knowledge of the amount of work he had performed except that derived from the estimates returned to the office; and I don't think I had any personal knowledge of the amount of payments made to him except such as was derived from the books of the company, and such vouchers as were there, and that I probably knew from time to time that payments were made to him. Up to that time I had had very little to do with the construction or financial department of the company. About the first of September, no final estimate having then been made, I was under impression that we were owing to Mr. Chamberlain between $300,000 and $400,000, and when the final estimate was made and the balance struck, showing the amount of over $600,000 due to him, the amount surprised me; and there being so much more due to him than I had anticipated, I insisted on a particular investigation of the accounts, to see if in reality there was so much due to him. The amount having been arrived at, the resolution was passed directing the note to be executed, with a warrant of attorney annexed, on which judgment might be entered. The damages allowed on the contract for suspension of the work did not go into that settlement, nor into that judgment. Mr. Chamberlain was there all the evening, and Mr. Woodward was there part of the evening. I had to rely on the figures of the engineer for the correctness of the estimate. I had given him special directions to be very careful, and had his assurance that the estimate was reliable. I told him that it must be as accurate as possible, but that in any event it must not include more work than was actually done, as I did not want the board to commit themselves by confessing a judgment for any more than was actually due; if there should be any margin I desired that it should be in favor of the company. I believed then, from all the information we had before us, that the amount for which that note was given was actually due from the company to Mr. Chamberlain. I thought then that it was possible that there might be slight errors in figures, but I could not discover any. I refused to the last to vote for that resolution,
814 but it was not because I doubted the amount due, but because of the effect it would have upon the company. I have learned nothing since which would change my opinion, that the amount allowed was all due provided it was made upon the correct basis; that is, if the work was done as specified in the estimate, and of the character described in the estimate, *and of the character described in the estimate;* of that I had no knowledge, and cannot judge, not being an engineer. I know that a re-estimate was made, but I do not know the result of it.

I am satisfied, on reflection, that I directed Mr. Woodward to make this estimate several days before this meeting, (which was, I think, on the first of October,) as Mr. Woodward went out on the road in order to make some measurements for the estimate.

I know there was an allowance made to Mr. Chamberlain for damages, the ground of which was fairly expressed, I think, in the resolution allowing the account.

H. L. PALMER.

815 Daniel L. Wells, being duly sworn, says:

I made the charge for team work, horses, &c., in getting the engine and cars over the dividing ridge. The charge was correct and the work was done. They were taken over the ridge before the tunnel was completed, because the company wanted to run the road beyond the ridge, and the tunnel was not completed. These bills show the items of the charge. I know this bill of $76 58 is correct, as well as the bill of $53. The bill of $76 58 was incurred in January, February, and March, 1858. Of this bill of $1,116 30 I paid a portion myself. Mr. Chamberlain furnished the chains and spike mentioned in the bill for repairs to the road after it was completed to La Crosse. I was the partner of Mr. Chamberlain in the firm of S. Chamberlain & Co. The other items of the bill, (besides chains and spikes,) are each paid by me for S. Chamberlain. The chains and spike were furnished and charged to S. Chamberlain by the firm, and he furnished them for the road. We had the chains and spike on the line of the road left over after the completion of it, and the men on the road used them in repairs sometimes. I knew of their taking them; sometimes they told me of it.

I had charge of the work of getting the engine and cars over the Wisconsin river. That was done just before Mr. Chamberlain took the lease. There was no agreement that I know of between Mr. Chamberlain and the company what price should be paid for the work. These disbursements were all necessary in doing this work.

I know the fact that a deduction was made for uncompleted work this side of New Lisbon, sufficient as estimated to complete the road to that place at the time of the settlement between Mr. Chamberlain and the company at the date of the rendition of his judgment. That work has been done since the judgment was rendered.

THURSDAY, 25*th April*, 1861.

Daniel D. Wells, being further examined, says:

I know that Chamberlain's men repaired gravel cars of the La Crosse Railroad Company, and that they sent in a bill for it, and that this is the amount of the bill.

I know that Mr. Chamberlain paid Mr. Boomer the amount
816 of the item in his account for stone and cement for the mason work of the drawbridge at Portage City. I made the arrangement with Mr. Boomer for it.

The work on the extention of the road beyond the La Crosse depot was done in the fall of 1858. It was between an eighth and a quarter of a mile, double track. I superintended the work, and I know that the account rendered for it is correct, and represents the actual disbursements of Mr. Chamberlain for labor only in build-

ing the work, the company furnishing the material. The amount is $2,656 75. It was built in the water in great part. The road could not have been operated without this extension. It was used as a side track partly for switching cars. The road was completed in the fall of 1858, and this work was done immediately afterwards.

I know the *the* station buildings at La Crosse were built under the charge of Mr. Sill. They were necessary for the operation of the road.

DANIEL D. WELLS.

District court of the United States for the district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and Sheperd Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et als.*

Deposition of Daniel L. Wells, taken before the masters under the order of reference in this cause of the 11th day of March, 1861, in behalf of Selah Chamberlain, defendant.

TUESDAY, 11 *June*, 1861.

Daniel L. Wells, being duly sworn, says:

I know the amount of solid rock excavation estimated by Mr. Woodin his final estimate, dated 1 October, 1857, as done by Mr. Chamberlain. The amount was 118,250 yards, according to that estimate. According to the Woodward & Sill estimate the amount was 118,557 cubic yards. Mrs. Chamberlain paid on the estimate of the engineer to Williams & Co., sub-contractors, between Kilbourn City and Manston, for excavation of 101,568 yards of rock. He also paid Garfield and Albee for 1,571 yards of rock excavation between the same points. S. Chamberlain took out a large amount
817 of rock east of Kilbourn City, which work is charged with 700 kegs of blasting powder.

(The foregoing testimony is objected to by Mr. Carpenter, counsel for Sebre Howard, and other defendants, and is taken subject to objection for irrelevancy.)

Cross-examined:

I know of my own knowledge as to these payments being made by Mr. Chamberlain. At the time of settlement he paid them about $4,000 in cash. Williams & Co. did much other work for Mr. Chamberlain, which was mixed with this in the final settlement. He paid them fifty cents a cubic yard for 101,568 cubic yards of rock excavation. Their whole account against him was over $90,000. I paid them most of the money on their monthly estimates, made by the engineers of the company. On the final settlement Mr. Chamberlain paid the $4,000 cash, and gave them his notes at 12, 18, and 24 months for the balance due them.

Re-examined:

The estimates on which they were from time to time paid were the same regular monthly estimates on which the amount done by Chamberlain was from time to time determined.

DAN'L L. WELLS.

SATURDAY, 31 *August*, 1861.

Daniel L. Wells, being further examined, testifies and says:

I have counted the coupons in Selah Chamberlain's possession in Milwaukee, which are now produced here. The statement which I now produce shows the number of coupons on each mortgage paid by him, and the number not returned as paid by the Ocean Bank, where the interest was advertised to be paid, and where the money was deposited to meet them. The statement embraces among those paid only those now presented here to verify the same. (Statement produced, marked Exhibit No. 28, and herewith returned.) The following is a further explanation of the item of Chamberlain's account: "Damage for detention and change of line at New Lisbon, $1,121;" the road had been located and some work done upon it by Mr. Chamberlain's sub-contractors when the line of the road was changed by the chief engineer, and Mr. Chamberlain was ordered to stop, and some days elapsed before a definite location of the line was made.

818 Mr. Chamberlain paid those sub-contractors $1,121 for the work they had done on the whole line, and for the detention while the new one was located. The chief engineer fixed the amount himself.

The road was built west of Portage by Mr. Chamberlain, under the chief engineer's directions, at the sub-grade. I don't think there was a continuous mile on that division where there was ballasting found in the entire section. The ballasting done on the 45.32 miles on the division was done by train afterwards under the direction and order of the chief engineer, and not under a written contract. It was worth more to do the ballasting done by Mr. Chamberlain between Milwaukee and Beaver Dam than that west of Beaver Dam, because the latter was continuous and the former was in separate patches, and there was more delay necessary, and there was also more detentions, because there were more trains running at this end of the road.

There were gravel cuts on the east 45 miles of the western division, where there was ballasting enough for the mile, but there was not a continuous mile section of gravel or ballasting. The coupons produced here are all cancelled by being punched.

DANIEL L. WELLS.

819 Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE & MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN *et al.*

The respective parties in this cause hereby stipulate as matter of accommodation to the clerk of this court in making up the voluminous records on the appeals taken, that said clerk shall have until the 1st day of January, A. D. 1867, to perfect and transmit the said records on the several appeals in this cause; that neither party shall move in the Supreme Court to dismiss either of said appeals because said records are not sooner sent, or otherwise take any objection thereto in said Supreme Court or otherwise; that this stipulation shall be filed in this cause, be considered a part of the record, and be copied therewith by said clerk.

Dated November 24, 1866.

M. H. CARPENTER,
Sol. for Mil. and Minnesota Railroad Company.
JOHN W. CARY,
Solicitor and of Counsel for Mil. and St. P. R'y Co.
N. J. EMMONS,
Solicitor for Selah Chamberlain.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom and of the whole thereof now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 26th day of December, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the said United States the ninety-first.

[SEAL.] A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN,
Deputy.

UNITED STATES OF AMERICA, *ss:*

To the Milwaukee and Minnesota Railroad Company and Selah Chamberlain, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the dis-

trict of Wisconsin, wherein the Milwaukee and St. Paul Railway Company is appellant and you are appellees, to show cause, if any there be, why the said decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this third day of November, in the year of our Lord 1866.

A. G. MILLER,
District Judge.

Served on the within named Milwaukee and Minnesota Railroad Company by delivering personally to John P. Green, treasurer, and Matt. H. Carpenter, attorney of said company, a copy of this citation, this 7th day of November, A. D. 1866.

CASSIUS FAIRCHILD, *Marshal.*
By WM. L. JACKSON, *Deputy.*

Service	$4 00
Travel	06
Copies	60
	4 66

Filed 9 January, 1867.